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ABSTRACT

The focus of this publication is to maximize the ability of business, education, and community partners to access information relating to legal issues and minor labor laws that have implications for school-based and work-based learning experiences. Each section is intended to provide the most applicable legal and labor law information. Since paraphrasing federal and state laws runs the risk of changing the intent of those laws, much of this document consists of excerpts taken directly from the laws, rather than an interpretation of the law. Many of the legal questions and concerns that sometimes swirl around the notion of business and education partnerships are addressed. The excerpts, compilations, and general application of legal and labor issues are provided only as guidelines and are not meant to be complete reflections on the regulations. Materials include an introduction and sections on employment relationships; child labor laws; minimum wages and overtime; unemployment compensation; liability and risk management; related employment laws; and federal and state technical assistance directories. Organized around questions compiled from five focus groups around Ohio, the document highlights the major concerns that individuals in the field who place students in work-based learning environments face on a continuing basis. (Contains 38 references.) (YLB)

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ED 457 348

Labor Laws

And

Issues

A guide for planning and implementing work-based learning opportunities for minors.

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► Table of Contents

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The information contained in this publication is not offered as a substitute for, nor to be cited as, legal advice. The excerpts, compilations, and general application of legal and labor issues contained in this publication are provided only as guidelines and are not meant to be complete reflections on the regulations. Business and education partners should direct specific questions to and request detailed, official explanations on legal issues and their applications from official government agencies and/or from an attorney.

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Ohio Department of Education

May 2000

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PREFACE

Working as collaborative teams, business, labor, education, public and private agencies, parents, and students are playing a major role in a movement to improve the academic, technical, and employability skills of our nation's youth. Concerned about the ability of our young people to respond to the increasing competition from the global market place and address the technological complexity of the workforce, business and education partners are finding ways to share ideas, expertise, and financial resources to forge solutions that serve students as well as each other. Various sectors of our nation have discovered that every school, company, and public agency must share the responsibility of educating our nation's youth.

While business and education partners have focused a great deal of attention on the challenges facing the public schools, they have also expressed concern with the legal implications their efforts bring to the workplace. When students enter the workplace under school-sponsored work-based learning programs, both employers and schools have legal, as well as moral obligations to protect the students and the rights of the existing workforce. The concern is well founded since we live in a litigious society that tends to lean towards fault finding rather than accepting personal responsibility for one's actions.

The focus of this publication is to maximize the ability of business, education, and community partners to access information relating to legal issues and minor labor laws that have implications for school-based and work-based learning experiences. Each section was carefully researched and prepared to provide the most applicable legal and labor law information. Every attempt was made to present the information in as straight forward and jargon-free dialogue as possible. However, paraphrasing federal and state laws runs the risk of changing the intent of those laws. Hence, much of this document consists of excerpts taken directly from the laws, rather than an interpretation of the law.

Many of the legal questions and concerns that sometimes swirl around the notion of business/education partnerships are addressed. Every company and school wonders if they will be liable if a student is injured during a work-based learning experience. Perhaps this document will alleviate some of the anxiety and answer many of those concerns. Ultimately, it is imperative that high-quality workplace learning experiences remain feasible and practical within the comfort zone of school and business officials.

The information contained in this publication is not offered as a substitute for, nor to be cited as, legal advice. The excerpts, compilations, and general application of legal and labor issues contained in this publication are provided only as guidelines and are not meant to be complete reflections on the regulations. Business and education partners should direct specific questions to and request detailed, official explanations on legal issues and their applications from official government agencies and/or from an attorney.
The materials in this document include an introduction and sections on: employment relationships; child labor laws; minimum wages and overtime; unemployment compensation; liability and risk management; related employment laws; and, federal and state technical assistance directories. Organized around questions that were compiled from five focus groups around the State of Ohio, the document high-lights the major concerns that individuals in the field, who place students in work-based learning environments, face on a continuing basis.

The concepts presented are not intended for any one particular group of students, nor are they intended to exclude any particular group of students. The goal is to ensure that every Ohio student graduates from high school and beyond with the experiences, knowledge, and skills needed to succeed in the ever-changing world of work and is prepared for life-long learning. The optimum word is "every". In Ohio "all means all have the opportunity". Access to work-based activities is available for all students, regardless of their race, color, national origin, sex, religion, disability, or age. Any activity designed, or that functions, to exclude any student is in conflict with the mission and principles of Career-Technical and Adult Education and is in violation of state and federal civil rights laws.

As individuals from business begin to work in the educational arena and educators begin to work in the business arena both need to reach a point where they are "comfortable working outside their comfort zone". Ideally, this document will serve as an effective tool to facilitate all business and education partners and assist them to reach a new and collaborative "comfort zone".

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TABLE OF CONTENTS

PREFACE iv

ACKNOWLEDGEMENTS vi

TABLE OF CONTENTS vii

INTRODUCTION 1

EMPLOYMENT RELATIONSHIPS 4

CHILD LABOR LAWS 16

MINIMUM WAGES and OVERTIME 39

UNEMPLOYMENT COMPENSATION 53

LIABILITY 55

RELATED EMPLOYMENT LAWS 65

STATE TECHNICAL ASSISTANCE CONTACTS 68

FEDERAL TECHNICAL ASSISTANCE CONTACTS 71

REFERENCES 73

INTRODUCTION

As increasing numbers of students participate in work-based learning experiences, the partners of a business/education initiative become concerned with the legal issues surrounding those activities. Some of the most common concerns include: liability; workers' compensation; unemployment insurance; and state and federal child labor laws. Compounding these concerns is the difficulty that partners are having finding answers to their concerns, and making viable interpretation from the information available.

Compliance information on the legal implications of work-based learning experiences is provided in several sources. Some of the most helpful resources include:

National School-to-Work Office. (1997). *School-to-Work and Employer Liability: A Resource Guide.* Washington D. C.: U. S. Department of Education and Labor.;

Office of School-to-Work Opportunities. (1995). *School-to-work Opportunities and the Fair Labor Standards Act: A Guide to Work-based Learning, Federal Child Labor Laws, and Minimum Wage Provisions.* Washington D. C.: U. S. Department of Education and Labor.;

Ohio Bureau of Workers' Compensation, Communications Department. *Workers' Compensation Guide for State-Fund Employers and their Employees.* Columbus, Ohio: Ohio Bureau of Workers' Compensation.;

Ohio Department of Commerce. Access www.ohio.gov then select agency web-site. From the ODC web-site select the Division of Labor and Safety, then the Bureau of Wage and Hour.

U. S. Department of Labor, Wage and Hour Division. (1998). *Handy Reference Guide to the Fair Labor Standards Act: Publication 1282.* Washington D. C.: U. S. Department of Labor, Employment Standards Administration, Wage and Hour Division.;

U. S. Department of Labor, Wage and Hour Division. (1997). *The Fair Labor Standards Act of 1938, as Amended: Publication 1318.* Washington D. C.: U. S. Department of Labor, Employment Standards Administration, Wage and Hour Division.;

U. S. Department of Labor, Wage and Hour Division. (1991). *Child Labor Requirements in Nonagriculture Occupations Under the Fair Labor Standards Act: Child Labor Bulletin 101, Publication 1330.* Washington D. C.: U. S. Department of Labor, Employment Standards Administration, Wage and Hour Division.;

U. S. Department of Labor, Wage and Hour Division. (1985). *Employment Relationship Under the Fair Labor Standards Act: Publication 1297.* Washington D. C.: U. S. Department of Labor, Employment Standards Administration, Wage and Hour Division.;

U. S. Department of Labor Wage and Hour Division. (1990). *Child Labor Requirements in Agriculture Under the Fair Labor Standards Act: Child Labor Bulletin No. 102, Publication 1295.* Washington D. C.: U. S. Department of Labor, Employment Standards Administration, Wage and Hour Division.

Business and education partners have a duty and obligation to become familiar with such resources and the legal issues that affect work-based activities for the students', as well as their own protection. Becoming informed with this literature is critical when placing students in work-based learning sites, because placements made in ignorance will elicit no sympathy from legal authorities.

As a legal source of information, the School-to-Work Opportunities Act of 1994 (STWOA) did not detail the legal compliance required of state and local partnerships. However, in Subchapter VI, Section 6231 the Act makes reference to federal, state, and local laws twice. First, "Students participating in such programs shall be provided with adequate and safe equipment and safe and healthful workplaces in conformity with all health and safety requirements of federal, state, and local law ". And second, "nothing in this chapter shall be construed to modify or effect any federal or state law prohibiting discrimination on the basis of race, religion, color, ethnicity, national origin, gender, age, or disability". Furthermore, the Departments of Education and Labor (1995) state the STWOA permits no waivers nor any additional compliance obligations of the Fair Labor Standards Act. Hence, employers have the same obligations with work-based students as they do with any working minor.

These obligations, regarding the employment of minors, exist at the state, federal and in some cases local levels. Unfortunately, that means there is no single document available to guide business and education partners through the maze of regulations. In spite of these difficulties, those involved in work-based learning experiences must become informed to the point where they fully understand, appreciate, and support these regulations to avoid the risks of child exploitation and endangerment.

When more than one governing body establishes regulations for minors, the guiding principle to follow is "the most stringent applies". Some states have enacted laws that closely parallel the federal law, while other states are more strict and still others more lenient. Furthermore, some child labor laws exist only in state law (i.e. employment certificates), while others exist only in federal law. In those cases where both the FLSA and that state's child labor laws regulate the same activity, and their rules conflict, the labor standard that applies is the one that is more strict (Beyer, 1995).

As individuals begin to investigate the legal implications surrounding a work-based placement, they soon realize the complexity of dealing with multiple governing bodies and volumes of legal documents and jargon. The intent of this publication is to assist business and education partners by simplifying the legal implications surrounding work-based learning experiences and reduce their anxiety as they participate in work-based activities.

EMPLOYMENT RELATIONSHIPS

The Fair Labor Standards Act (FLSA), first enacted in 1938 and amended on several occasions, contains provisions and standards concerning record keeping, minimum wages, overtime pay and child labor. These basic requirements apply to employees engaged in interstate commerce or in the production of goods for interstate commerce and also to employees in certain enterprises which are so engaged. Furthermore, federal, state, and local government employees are also subject to the same provisions of the Act. However, in spite of that mandate, state and local government employees engaged in traditional governmental activities are subject only to the record keeping and child labor requirements. And finally, some specific exemptions from the FLSA's requirements are provided for employees employed by certain establishments, such as schools and hospitals (DOL 1297, 1985).

Parallel to the FLSA, the Ohio Revised Code (ORC) also contains provisions for record keeping, minimum wages, overtime pay and child labor. In those limited instances where the FLSA would not apply, the ORC would contain the governing regulations. The differences between state and federal regulations are not extensive since many of the state regulations were written to be consistent with the FLSA making governance and compliance more efficient. The definition of an employee is one example where both state and federal documents cite the same interpretation.

When is an Individual Considered to be an Employee?

For the FLSA and the ORC to apply to a student engaged in work which is covered by the labor laws, an employer-employee relationship must exist. This relationship requires an "employer", an "employee" and the act or condition of employment. In general, an employee is one who follows the usual path of an employee and is dependent on the business which he or she serves. According to Section 3(g) of the FLSA, the definition "to employ" is "to suffer or permit to work." The U. S. Department of Labor (1985) interprets this to mean "mere knowledge by an employer of work done for him or her by another is sufficient to create the employment relationship under the Act."

The principal test relied upon by the courts for determining whether an employment relationship exists has been whether the possible employer controls or has the right to control the work to be done by the possible employee to the extent of prescribing how the work shall be performed. Additional considerations are the method of payment and how free the possible employer is to replace the possible employee with another. In Rutherford Food Corporation v McComb (67 SCT 1473, 1947) the Supreme Court has said that there is "no definition that solves all problems as to the limitations of the employer-employee relationship" under the FLSA. A determination of the relationship cannot be based on "isolated factors" or upon a single characteristic or technical concepts, but rather "upon the circumstances of the whole activity, including the underlying economic reality" (DOL 1297, 1985).

The Rutherford v McComb ruling (67 SCT 1473, 1947) refers to clear areas of when an employment relationship exists and when it does not exist, as well as, gray areas that require investigations into the circumstances of the whole activity. Partnerships placing students in clearly defined positions, following the respective policies and regulations, should feel comfortable they are in compliance with the governing labor laws. In contrast, partnerships that place students in areas that are not clearly defined need to contact the appropriate wage-hour office and obtain an official ruling before they can be comfortable with their placement.

Employee: Although there are some limited exceptions, there are two relatively clear guidelines to follow when determining the employer-employee relationship. First, and certainly the easiest to determine, is when a student receives wages or compensation. Under these circumstances the employer-employee relationship is well established, even though schools and some other public agencies are provided limited exceptions to this rule. Second, when the student is actually providing services that are of immediate benefit to the employer an employer-employee relationship exists. The benefit can be in the form of profitability or production for the business. Keys to determining benefit include: the student may be completing assignments normally completed by regular employees; as a result of the student's activities, vacant paid positions in the business may remain unfilled; and/or regular employees may be displaced or relieved of their normally assigned duties.

In an employment relationship, the participating business and school are responsible for compliance with the Fair Labor Standards Act and/or the employment laws contained in Ohio Revised Code. This means school programs, sheltered workshops and all other agencies administering covered work training programs must adhere to FLSA (Moon & Kiernan, 1990) and ORC regulations. Under an employment relationship, schools and employers must realize they are responsible for the health and safety of their young workers. Consequently, they must ensure students are properly trained and supervised as they participate in work-based learning activities.

However, not every student that enters the workplace is considered an employee. Young people experience a number activities that take them into public and private business, industry, and service organizations that are not employment activities. Examples of these activities include: field trips; job shadowing experiences; career exploration; and other non-school sponsored activities, such as "bring your daughter to work day". Generally, students participating in work-site activities fall into the following categories: observer, volunteer, trainee, or employee.

As mentioned earlier, the Supreme Court (67 SCT 1473, 1947) has ruled that there is "no definition that solves all problems as to the limitations of the employer-employee relationship" under the Fair Labor Standards Act. The Court also said that determination of the relation cannot be based on "isolated factors" or upon a single characteristic or "technical concepts", but it depends upon the circumstances of the whole activity" including the underlying "economic reality" (DOL 1297, 1985). Given the Supreme Court's decision, the following discussions have been provided to define, clarify, and extend the understanding of the employer-employee relationship for business and education partners.

Job Shadowing: Business and education partners desiring to implement job shadowing experiences for students should communicate to all stakeholders the parameters of the activity. Job shadowing is designed to provide a model for student behavior through examples, and reinforce the link between classroom learning and work requirements. But, most importantly, stakeholders need to understand it is limited in that it allows students to **observe only**.

Job shadowing is a work-site experience option where a student follows and observes a competent employee in his or her daily activities, **but performs no work** (STW & FLSA, 1995). It is a temporary, unpaid exposure in a **non-hazardous** occupational area that is of interest to the student. The nature of the experience is designed to increase a student's career awareness and exploration opportunities. By shadowing an employee the student receives firsthand exposure to the work environment and observes employability and occupational skills in practice. Job shadowing serves as an excellent tool as young people consider career options and the respective education needed to pursue those options.

Students participating in a job shadowing experience would not be considered employees covered by the Fair Labor Standards Act or the Ohio Revised Code. The experience is temporary, unpaid and observation only, which does not meet the definition of an employer-employee relationship. Direct work experience, responsibility and performance skills are not required. While integration of school and work is implied, there is little if any curriculum alignment between the school and occupational area (Paris & Mason, 1995).

Volunteer Services: Within many communities the number of students who desire and could benefit from a work-site learning experience exceed the number of appropriate positions available. This situation can be attributed to sparse population, economic conditions, or the lack of diverse businesses and industries. Under these circumstances business and education partners would like to rely on volunteer positions to meet the needs of their community within the legal parameters of state, federal, and local labor laws. Fortunately, the Fair Labor Standards Act addresses the issue of volunteer service, providing guidance for communities to meet their student's work-based learning needs through this avenue.

According to SEC. 3 (4) of the FLSA (DOL 1318, 1997):
(A) the term "employee" does not include any individual who volunteers to perform services for a public agency which is a State, a political subdivision of a State, or an Interstate government agency, **if**-

> (i.) the individual receives no compensation or is paid expenses, reasonable benefits, or a nominal fee to perform the services for which the individual volunteered; and
> (ii.) such services are not the same type of services which the individual is employed to perform for such public agency.

(B) An employee of a public agency which is a State, political subdivision of a State, or an Interstate governmental agency may volunteer to perform services for any other State, political subdivision, or Interstate governmental agency, including a State, political subdivision or agency with which the employing State, political subdivision, or agency has a mutual aid agreement (DOL 1318, 1997).

Items (ii) and (B) would apply to students who are working outside of a school program for compensation in a public agency. For example, a student may be

holding a part-time job in a county nursing home as a nurse aid, which would exclude them from being placed there through any other program as a volunteer nurse aid. A student could, however, be placed, as a volunteer, in another agency or in a position other than nurse aid in the same agency.

As reported earlier, the Fair Labor Standards Act (DOL, 1985) defines the term "employ" as including "to suffer or permit to work". However, the Supreme Court, in Rutherford v McComb (67 SCT 1473, 1947), has made it clear that the Act was not intended "to stamp all persons as employees who, without any expressed or implied compensation agreement, might work for their own advantage on the premises of another". In administering the Act, the Department of Labor follows this judicial guidance in the case of individuals serving as unpaid volunteers in various community services. Students who volunteer or donate their services, usually on a part-time basis, for public service, religious or humanitarian objectives, not as employees and without compensation of pay, are not considered as employees of the religious, charitable and similar nonprofit corporations which receive their services (DOL 1297, 1985). For example, students may choose to assist with school fund raisers, deliver meals to the homebound, visit patients in nursing homes or solicit donations.

Students may be considered to be "volunteers", at public agency sites, if the intent is clearly to donate their services for the public good. However, schools cannot legally require students to 'volunteer" or perform unpaid public service as a way to gain vocational experience, as a condition of graduation, or as a prerequisite for other school activities (DOL, July 1996).

Love (1994) suggested the following guidelines to assure students were serving as volunteers:

- ~ the placement is an accepted and established (bona fide) volunteer position in the community;
- ~ the student chose to volunteer;
- ~ others are volunteering for the organization in a similar capacity;
- ~ all parties agree this is voluntary;
- ~ all parties involved agree that pay is not contemplated.

Commercial businesses may not ever legally utilize unpaid volunteers. Typical authorized volunteer sites include established volunteer programs operated by charitable nonprofit organizations, governmental agencies, hospitals, and nursing homes (DOL, 1996). If there are questions about a potential work site, contact the appropriate U. S. Department of Labor Wage-Hour Division.

Trainees: Few people would disagree that students involved in work-based learning experiences are involved in training, hence many would label them trainees instead of employees. A universal interpretation, however, would be in conflict with the Fair Labor Standards Act. In an attempt to provide clarity and protect the integrity of the Fair Labor Standards Act, the U. S. Department of Labor (1985) has provided definitive guidelines that specifically define "trainees". Business and education partners, who desire to place students as trainees should be in compliance with all guidelines.

According to the U. S. Department of Labor (1985), the Supreme Court (67 SCT 1473, 1947) has held that the words "to suffer or permit to work", as used in the FLSA to define "employ" do not make all persons employees who,

without any express or implied compensation agreement, may work for their own advantage on the premises of another. Whether trainees or students are employees of an employer under the Act will depend upon all of the circumstances surrounding their activities on the premises of the employer. If **all** of the following criteria apply, the trainees or students are not employees within the meaning of the Act:

- ~ the training, even though it includes actual operation of the facilities of the employer, is similar to that which would be given in a vocational school;
- ~ the training is for the benefit of the trainees or students;
- ~ the trainees or students do not displace regular employees, but work under their close observation. For example, the presence of the student at the work-site cannot result in an employee being laid off, the employer not hiring an employee he or she would otherwise hire, or an employee working fewer hour than he or she would otherwise work (STW & FLSA, 1995);
- ~ the employer that provides the training derives no immediate advantage from the activities of the trainees or students and on occasion his or her operation may actually be impeded;
- ~ the trainees or students are not necessarily entitled to a job at the conclusion of the training period; and
- ~ the employer and the trainees or students understand that they are not entitled to wages for the time spent in training (DOL, 1297, 1985). However, the student may be paid a stipend for such expenses as books or tools (STW & FLSA, 1995).

In School Placements : Providing viable work-based learning experiences for students becomes progressively more difficult with younger minors. For a variety of reasons, such as, maturity, transportation, economic return to employers, safety and training background, fourteen and fifteen year olds are more challenging to place outside the school environment. To address this problem, placement coordinators have turned to the school systems to meet the needs of their students. Understanding the economic realities of school systems and the benefits of in-school placements, authors of the Fair Labor Standards Act provided limited exemptions to schools for some regulations.

In-school work-based placements are classified as either employment relationships or non-employment relationships. Schools employing students will not have to pay minimum wages or overtime, but they must maintain records, adhere to state and federal child labor provisions, and avoid placements in hazardous occupations. On the other hand, schools providing in-school work opportunities as part of a non-employment educational program are not subject to state or federal labor regulations. There are however some very strict limitations for in-school placements of a non-employment nature.

In a non-employment relationship, as part of a student's overall educational program, a school may permit or require students to engage in various school-related, non-hazardous work programs within their district. However, the work programs must be conducted primarily for the benefit of the students and for a period of no more than one hour per day (or an equivalent amount of overall

time). Also, the fact that a student may receive a minimal payment for participation in such activities would not necessarily create an employment relationship (DOL, 1996). Typical non-employment work activities could include cafeteria work, custodial work, clerical assistance, etc.

On the other hand, in an employment relationship the Wage Hour Division (FLSA, Section 14(d)), will take no enforcement action with respect to minimum wage and overtime for elementary or secondary students employed by any school in their school district in various school-related work programs. Such employment, however, must be in compliance with applicable record keeping, child labor provisions, and avoid hazardous activities. This non-enforcement policy is not applicable to workers with disabilities in sheltered workshops operated by elementary or secondary schools, or outside contractors doing business on the school grounds, since sheltered employment is not considered to be an integral part of a regular education program (Deimel, 1993).

Joint Employment: Questions have surfaced regarding the employer/employee status of student workers who hold more than one employment position or organizations that utilize temporary employment agencies to secure employees. Either of these situations complicates the occupational coordinator's responsibilities to the student, employers, school, and parents.

According to the U. S. Department of Labor (1985), a single individual may stand in the relation of an employee to two or more employers at the same time under the Fair Labor Standards Act, since there is nothing in the Act which prevents an individual employed by one employer from also entering into an employment relationship with a different employer. If employment by one employer is not completely disassociated from employment by the other employer (s) all of the employee's work is considered as one employment for purposes of the Act. In this event, all joint employers are responsible, both individually and jointly, for compliance with all of the applicable provisions of the Act.

Generally, a joint employment relationship will be considered to exist in situations where the employee performs work which simultaneously benefits two or more employers, or works for two or more associated employers at different times during the workweek. The following situations are provided as examples of joint employment relationships.

(1) An arrangement between employers to share an employee's services. For example, two companies on the same or adjacent premises arrange to employ a janitor or watch person to perform work for both firms. Even though each entity carries the employee on its payroll for certain hours, such facts would indicate that the employee is jointly employed by both firms and both are responsible for compliance with the monetary provisions of the Act for all of the hours worked by the employee; or

(2) Where one employer is acting directly or indirectly in the interest of the other employer (or employers) in relation to the employee. For example, employees of a temporary help company working on assignments in various establishments are considered jointly employed by the temporary help company and the establishment in which they are employed. In such a situation, each

individual company where the employee is assigned is jointly responsible with the temporary help company for compliance with the FLSA during the time the employee is in a particular establishment. The temporary help company would be considered responsible for the payment of proper overtime compensation to the employee since it is through its act that the employee received the assignment which caused the overtime to be worked. Of course, if the employee worked in excess of 40 hours in any workweek for any one establishment, that employer would be jointly responsible for the proper payment of overtime as well as the proper minimum wage; or

(3) Where the employers are not completely disassociated with respect to the employment of a particular employee and may be deemed to share control of the employee, directly or indirectly, by reasons of the fact that one employer controls, is controlled by, or is under common control with the other employer (DOL 1297, 1985). For example, an individual may be officially employed by a subsidiary of a larger company, but if the subsidiary sends the employee to the main company to perform work he/she could be considered as being in an employer/employee relationship with both companies.

Under the circumstances just described, the individual coordinating the work-based learning experiences would need to develop agreements, relationships, and communication with all responsible parties. Each employer would need to understand their obligations, within the Fair Labor Standards Act, would be a collective as well as an independent responsibility to all provisions of the Act.

On the other hand, if two or more employers are acting entirely independently of each other and are completely disassociated with respect to the employment of a particular employee, who during the same workweek performs work for more than one employer, each employer may disregard all work performed by the employee for the other employer (or employers) in determining his or her own responsibilities under the Act (DOL 1297, 1985).

Independent Contractor: An independent contractor is probably not a position most business and education partners initially would be concerned with regarding students in work-based learning environments. However, there is a distinct possibility that students may be working for individuals operating as independent contractors. Under these circumstances, if it is determined that one who claims to be an independent contractor is in fact an employee, then all the employees of this so-called independent contractor engaged in the work for the principal employer likewise become the employees of the principal employer. This would mean the principal employer, not the reputed independent contractor, would be the student's actual employer and must guarantee compliance with the FLSA and keep the records of the employees (Deimel, 1993).

Referring again to the Rutherford v McComb (67 SCT 1473, 1947) decision mentioned earlier helps to understand why each independent contractor relationship must be evaluated on its own circumstances and no single entity, such as where the work is performed, can be a determining factor. The Supreme Court's position is "no definition solves all problems as to the limitations of the employer-employee relationship" under the Fair Labor Standards Act. The court also said that determination of the relation cannot be based on "isolated factors" or upon a single characteristic or "technical

concepts", but depends "upon the circumstances of the whole activity" including the underlying "economic reality" (DOL ,1297, 1985). Given this decision, business and education partners would be wise to investigate the status of independent contractors carefully.

To assist with this investigation the DOL (1985) stated, in general an employee, as distinguished from an independent contractor who is engaged in a business of his/her own, is one who "follows the usual path of an employee" and is dependent on the business which he/she serves. The principal test relied upon by the courts for determining whether an employment relationship exists has been whether the possible employer controls or has the right to control the work to be done by the possible employee to the extent of prescribing how the work shall be performed. Additional considerations are the method of payment and how free the possible employer is to replace the possible employee with another. The factors which have been considered significant, although no single one is regarded as controlling, are:

- ~ the extent to which the services in question are an integral part of the employer's business;
- ~ the permanency of the relationship;
- ~ the amount of the alleged contractor's investment in facilities and equipment;
- ~ the nature and degree of control by the employer's business;
- ~ the alleged contractor's opportunities for profit and loss; and
- ~ the amount of initiative, judgment, or foresight in open market competition with others required for the success of the claimed independent enterprise (DOL 1297, 1985).

To alleviate misunderstandings, avoid unscrupulous employers from circumventing the FLSA, and allow legally established independent contractors to produce products and provide services without interference, the Secretary of Labor is authorized by the FLSA to make such regulations and orders regulating, restricting, or prohibiting industrial homework. These orders and regulations (FLSA, Sec. 11. (d)), are to be made as are necessary or appropriate to prevent the circumvention or evasion of and to safeguard the minimum wage rate prescribed in this Act, and all existing regulations or orders of the Administration relating to industrial homework (DOL 1318, 1997).

Deimel (1993) communicated many of these orders and regulations in her *Field Operations Handbook.* She stated, for investigative purposes, it can be assumed that a home-worker is an employee, even though there may be a buying and selling arrangement between the parties. If the employer asserts their outside work or homework is performed by independent contractors, the following factors should be considered concerning the employee/employer relationship:

- ~ Does the employer have the right to control the manner of the performance of the work or the time in which the work is to be done?
- ~ Is the employer paying taxes for social security, unemployment, or workers' compensation insurance?
- ~ Has the home-worker ever collected any benefits, such as unemployment or workers' compensation, because of employment by the employer?
- ~ Does the employer furnish the material, or finance directly or indirectly the purchase of the material which the home-worker uses?

~ When did the practice of buying and selling between the employer and the home-worker begin, and what are the mechanics of the transaction?
~ Does the home-worker bill the employer for the work done? Are bills of sale prepared? Are sales taxes paid, or are state or local exemptions obtained because of retail purposes? Are payments made in cash or by check?
~ How does the home-worker profit under the buying-selling arrangement compare with their wages as a home-worker?
~ Who does the worker consider to be the employer?
~ Does the home-worker have a State certificate to do homework?
~ What equipment is used, what is the value, and who furnishes it?" (Deimel, 1993, p. 10b04)

Should the answer to any one of these factors be yes, and the business and education partners still feel an independent contractor is the appropriate designation, they need to request the independent contractor contact the Federal Wage and Hour Division for an official clarification. This constitutes protection for the student, the alleged independent contractor as well as the alleged employer. For example, manufacturers or producers need to be assured a true independent contractor complies with the FLSA to avoid interference with the manufacturer's own operations through "hot goods" action under FLSA Sec. 15(a)(1). "Hot goods" refers to products produced by employees in violation of specific sections of the FLSA, which can not be legally transported, delivered, or sold.

One of the more prevalent issues in determining independent contractor status seems to be the amount of control a possible employer has over a possible employee. When the possible employee is clearly a subordinate party, the relationship is one of employment. If the possible employer has control over the manner in which the work is to be performed, the absence of any or all other factors will not indicate an absence of the employer-employee relationship (Deimel, 1993). Some of the factors that are immaterial to the determination of whether the relationship is one of employer-employee or of independent contractors include:

~ the state or local government grants a license to the alleged independent contractor;
~ the measurement, method, or designation of compensation;
~ the fact that no compensation is paid and the alleged independent contractor must rely entirely on tips;
~ the place where the work is performed;
~ the absence of a formal employment agreement (Deimel, 1993).

Another factor impacting independent contractors involves the sale of another's products or services. Deimel (1993, p.10b08) explained the sales relationship stating, "an employment relationship may exist between the parties to a transaction which is nominally a "sale". Thus, house-to-house canvassers who sell at retail the products of a particular company are employees of the company when the control exercised by the company over these so-called 'dealers' is not substantially different than that exercised by an employer over their outside salesmen. "Likewise, an employee is not converted into an independent contractor by virtue of a fictitious 'sale' of the goods produced by him or her to an employer, so long as the other indications of the employment relationship exist" (Deimel, 1993, 10b08).

Once it is determined that one who is reputed to be an independent contractor, lessee, partner, or the like, is in fact an employee, then all the employees of this so-called independent contractor engaged in the work for the principal employer likewise become the employees of the principal employer. This would mean the principal employer, not the reputed independent contractor,

would be the student's actual employer and must guarantee compliance with the FLSA and keep the records of the employees (Deimel, 1993).

Summary

As one can see from the discussion, the placement of students in the workplace can be a clearly defined position of employee or non-employee, or a complex position that will require interpretation from the respective wage and hour administrator. Anytime business and education partners are not clear or comfortable with a placement they would be wise to seek advice from the experts. After all, the correlation of work-based learning and student protection is always the ultimate goal of any educational work-based activity.

CHILD LABOR LAWS

✎ Where can I find the federal and state minor labor regulations?

Business and education partners operating within The State of Ohio have an obligation to become familiar with both state and federal minor labor laws. At the federal level the Fair Labor Standards Act (FLSA), enacted in 1938, is the primary legislation governing the employment of minors. The State of Ohio, on the other hand, devotes a chapter of The Ohio Revised Code (ORC) to child labor provisions that business and education partners may refer to for guidance. *Chapter 4109 "Employment of Minors"*, describes regulations such as, conditions and hours of employment, age and schooling certificates, etc. In addition, *4101:9-2 Ohio Administrative Rules and Regulations,* describes the prohibition of the employment of minors in occupations hazardous or detrimental to their health. The FLSA is available from the Department of Labor, Wage and Hour Division, while applicable Ohio laws and regulations are available through the Ohio Department of Commerce, Bureau of Wage and Hour.

The differences between state and federal regulations are not extensive since many of the state regulations were written to be consistent with the FLSA, making governance and compliance more efficient. In some cases, however, the state regulations may cover areas federal regulations do not address and in other cases federal regulations cover areas the state does not address. But rarely, if at all, do the two governing regulations conflict on minor labor laws. The definitions for "employ", "employer" and "minor" utilized by the ORC and FLSA serve as examples of the consistency between the two agencies concerning minor labor regulations. Both define "employ" as to permit or suffer to work, "employer" as the state, its political subdivisions, and every person who employs any individual, and "minor" as any person less than eighteen years of age.

✎ Who governs the minor labor laws.

While the Fair Labor Standards Act is governed by the Department of Labor (DOL) Wage and Hour Division or their representatives, the State of Ohio utilizes several enforcement officials for minor labor laws, including:

- ~ the director of the Ohio Department of Commerce, or his/her authorized representative;
- ~ the superintendent of public instruction or his/her authorized representative;
- ~ any school attendance officer;
- ~ any probation officer;
- ~ the director of health or his/her authorized representative; and
- ~ any representative of a local department of health.

Please be aware, the information contained in this section will high-light the most applicable regulations for educational work-based activities from both state and federal minor labor laws. These excerpts are provided only as guidelines and are not meant to be a complete reflection of all elements of the laws. Specific questions and detailed explanations of any concept should be derived from the actual law, revised code, or from interpretations provided by officials from the respective wage and hour division.

The Employment of Minors: Ohio Revised Code

Do educational work experience students need work permits?

Age and Schooling Certificates (Section 4109.02 & .03 ORC): Although federal law is silent on the issue of age and schooling certificates, state law is quite clear. *Except for minors aged sixteen or seventeen who are employed during summer vacation or in seasonal work (see below), or for provisions in sections 4109.06 of the ORC (page 17), "no minor of compulsory school age shall be employed by any employer unless the minor presents to the employer a proper age and schooling certificate, as a condition of employment."* Furthermore, no employer shall:

- ~ employ a minor before exacting from such minor the age and schooling certificate, required by law;
- ~ fail to keep such certificate on file;
- ~ fail to return to the superintendent of schools or his/her authorized representative such certificate or give notice of the non use thereof within five working days from such minor's withdrawal or dismissal from his/her service;
- ~ continue to employ a minor after his/her age and schooling certificate is void; or,
- ~ refuse to permit an enforcement official to examine such certificate, to observe the conditions under which minors are employed, or to make reasonable inquiry of minors or persons supposed by such official to be under eighteen in regard to matters pertaining to their age, employment, or schooling (Section 4109.03).

In addition, no employer or officer or agent of an employer shall participate or acquiesce in any violation of law relating to compulsory education or employment of minors (Section 4109.04, ORC).

How do minors obtain work permits?

When there is a promise of a job the minor picks up the application cards from the local Board of Education or School. There are four separate cards needed to complete the work permit: 1) Employer's Card: completed and signed by the employer; 2) School's Data Card: completed and signed by the school; 3) Physician's Card: completed and signed by the physician; and, 4) Application Card: completed and signed by the minors parent/guardian. The completed cards must be returned by the minor with proof of age (Birth Certificate or Baptismal Record) to the school official (Title 3331, ORC).

A new work permit must be obtained each time the minor changes jobs; it cannot be transferred from one employer to another. Any initial or subsequent age and schooling permit may be denied by the Superintendent of Schools, the parent or guardian, or by the Ohio Department of Commerce, Bureau of Wage and Hour (Title 3331, ORC).

Do minors need work permits during the summer?

Minors aged sixteen or seventeen who are to be employed during summer vacation months in non-agricultural and non-hazardous employment, as defined by the Fair Labor Standards Act of 1938 and similar state statutes, shall not be required to provide an age and schooling certificate as a condition of employment. In addition, sixteen and seventeen year olds employed in seasonal work two months before and two months after summer vacation, also shall not be required to provide an age and schooling certificate as a condition of employment. However, all sixteen and seventeen year olds must provide the

employer with evidence of proof of age and a statement signed by the minor's parent or guardian consenting to the proposed employment.

✎ Does federal law require proof of age?

Although the federal law does not require an age and schooling certificate, the FLSA does require employers to keep on file the date of birth of every employee under age nineteen. This documentation protects the employer from situations where a minor gives an employer a false date of birth, and the employer thus unwittingly violates the minimum age standards of the FLSA. Though not required by the FLSA, business and education partners are encouraged to use the age and schooling certificate required by the ORC (DOL 1330, 1991) or a federal certificate of age, issued by the DOL Wage-Hour Division, to validate the date of birth.

✎ Who issues the age & schooling certificate?

According to the ORC, a valid age and schooling certificate constitutes conclusive evidence of the age of the minor and of the employer's right to employ the minor in occupations not denied by law to minors of that age under section 4109.06 of the revised code or rules adopted thereunder. Students desiring work experience must contact their school to acquire the appropriate age and schooling certificate before participating in an employment relationship.

✎ What records must be posted?

List of Minor Employees and Abstract of Chapter to be Posted (4109.08, ORC): No minor shall be employed unless the employer keeps, on the premises, a complete list of all minors employed by the employer at a particular establishment and a printed abstract summarizing the provisions of Chapter 4109. of the Revised Code. The list and abstract shall be posted in plain view in a conspicuous place which is frequented by the largest number of minor employees, and to which all minor employees have access. Abstracts are available from the Ohio Department of Commerce, Bureau of Wage and Hour .

✎ What legal steps may enforcement agents use?

Enforcement Powers (4109.08, ORC): An enforcement official may require any employer, in or about whose establishment an employee apparently under

eighteen years of age is employed and whose age and schooling certificate is not filed as required by section 4109.02 of the Revised Code, to furnish the enforcement official satisfactory evidence that the employee is in fact eighteen years of age or older.

Furthermore, any employee apparently under eighteen years of age may be taken into custody and charged with being an unruly child or other appropriate charge under Chapter 2151. of the Revised Code if the minor refuses to give an enforcement official his or her name, age, and place of residence when the minor is working in any occupation or establishment where there are restrictions by rule or law governing the employment of minors, and the employer has not fulfilled a request to furnished satisfactory evidence that the suspected minor is at or above the age required for performance of employment.

False Statements (4109.08, ORC): No person shall, with the intent to assist a minor to procure employment, make a false statement to any employer or to any person authorized to issue an age and schooling certificate.

✎ What is the penalty for not returning a work permit?

Return of Certificate on Request or Failure of Minor to Work (Section 4109.09, ORC): After a minor employee has made a written request that an employer return his or her age and schooling certificate, should the employer fail to mail the document to the issuing authority within three days of receipt of the

request, the minor shall be entitled to recover from the employer an amount equal to the wages which the minor would have earned had he or she continued in employment for the period between the receipt of the request by the employer and the initiation of the suit or compliance with the request by the employer.

On the other hand, if any minor fails to appear for work without explanation for three days, an employer shall consider the employment terminated, and shall return the age and schooling certificate to the issuing authority.

What is a minor wage agreement?

Written Evidence of Terms of Employment (Section 4109.10, ORC): No employer shall give employment to a minor, without agreeing with the minor as to the wages or compensation he or she shall receive for each day, week, month, or year; or per piece, for work performed. The employer shall furnish the minor with written evidence of the agreement on or before each payday, with a statement of the earnings due and the amount to be paid to him or her. Furthermore, no employer shall reduce the wages or compensation of any minor without giving the minor notice at least twenty-four hours previous to the reduction, at which time a written agreement shall be entered into with the minor as in the case of original employment.

Can an employer garnish a minor's wages for losses?

Retaining Wages to Cover Loss Prohibited (Section 4109.10, ORC): No employer shall retain or withhold from a minor in his or her employ the wages or compensation, or any part thereof, agreed to be paid and due the minor for work performed or services rendered because of presumed negligence or failure to comply with rules, breakage of machinery, or alleged incompetence to produce work or perform labor according to any standard of merit.

Security Against Loss May Not be Required (Section 4109.10, ORC): No employer shall receive a guarantee, bonus, money deposit, or other form of security to obtain or secure employment for a minor or to ensure faithful performance of labor, guarantee strict observance of rules, or make good losses which may be charged to the minor's incompetence, negligence, or inability.

How extensive is the record keeping for minor employees?

Records to be Kept (4109.11, ORC): Every employer shall keep a time book or other written records which shall state the name, address, and occupation of each minor employed, the number of hours worked by such minor on each day of the week, the hours of beginning and ending work, the hours of beginning and ending meal periods, and the amount of wages paid each pay period to each minor. The director of the Ohio Department of Commerce or his/her authorized representative shall have access to and the right to copy from the time book or records. All records shall be kept for a period of two years. No employer shall fail to keep such time book or records, knowingly make false statements therein, or refuse to make the time book and records accessible, upon request, to the director or his/her authorized representative.

Prohibitions (4109.12, ORC): No person shall continue to employ any minor in violation of any law relating to the employment of minors after being notified of the violation in writing by the director of the wage and hour division or other enforcement official. However, failure of the Ohio Department of Commerce Director or other enforcement official to give such notice does not excuse or negate a conviction for any offense except a violation of this division.

Furthermore, no employer shall employ, and no person having any minor under his or her control as parent, guardian, or custodian, shall permit or suffer a minor

to be employed in violation of any law relating to the employment of minors for which a penalty is not otherwise provided by law.

Are there any exceptions to state regulation?

Exceptions to Coverage of Chapter 4109 Employment of Minors (Section 4109.06, ORC): Although it appears the exceptions listed in 4109.06 would leave more latitude in the employment of minors, business and education partners must be aware these are **not exemptions** from the regulations established by the Fair Labor Standards Act. These exemptions are only for regulations established by Chapter 4109 ORC, and then only for those individuals listed in section 4109.06 of the revised code. Some areas exempted by this section, such as limitations on hours, are still covered by the FLSA.

Even though these are legitimate exemptions, officials from the Ohio Department of Commerce, Bureau of Wage and Hour encourage individuals placing minors in the workplace to adhere to both federal and state regulations. Protecting the well-being of our young people by operating well within the law is far more prudent than pressing educational work-based opportunities to the extremes of the law.

Chapter 4109 of the ORC does not apply to:

- ~Minors who are students working on any properly guarded machines in the manual training department of any school when the work is performed under the personal supervision of an instructor;
- ~ Students participating in a vocational program approved by the Ohio department of education;
- ~ A minor participating in a play, pageant, or concert produced by an outdoor historical drama corporation, a professional traveling theatrical production, a professional concert tour, or a personal appearance tour as a professional motion picture star, in accordance with the rules adopted pursuant to division (A) of section 4109.05 of the Revised Code;
- ~ The participation without remuneration of a minor with the consent of a parent or guardian, in a performance given by a church, school, or academy, or at a concert or entertainment given solely for charitable purposes, or by a charitable or religious institution;
- ~ To minors who are employed by their parents in occupations other than occupations prohibited by rule adopted under this chapter;
- ~ Minors engaged in the delivery of newspapers to the consumer;
- ~ Minors who have received a high school diploma or a certificate of attendance from an accredited secondary school or a certificate of high school equivalence;
- ~ Minors who are currently heads of households or are parents contributing to the support of their children;
- ~ Minors engaged in lawn mowing, snow shoveling, and other related employment;
- ~ Minors employed in agricultural employment in connection with farms operated by their parents, grandparents, or guardians where they are members of the guardians' household. Minors are not exempt from this chapter if they reside in agricultural labor camps as defined in section 3733.41 of the Revised Code.

Regulations requiring age and schooling certificates (4109.02), list of minors, posting of chapter rules, enforcement powers, and false statements (4109.08),

return of age and schooling certificate (4109.09), and records to be kept (4109.11) of the Revised Code do not apply to:

- ~ Minors who work in a sheltered workshop operated by a county board of mental retardation;
- ~ Minors performing services for a nonprofit organization where the minor receives no compensation, except for any expenses incurred by the minor or except for meals provided to the minor;
- ~ Minors employed in agricultural employment and who do not reside in agricultural labor camps.

Hours of Employment

What hours may 14 & 15 year olds work?

Limits on Hours of Employment of Person Under Sixteen (Section 4109.07 ORC & FLSA): The ORC limits on hours of employment for persons under sixteen are closely aligned to the FLSA, thus the laws of both jurisdictions are more clear and comprehensive for employers. Unless subject to the exceptions listed below, fourteen and fifteen year olds are not permitted to work during school hours when school is in session, whether or not they are attending school. The exceptions include:

- ~ employers **not** subject to the FLSA may utilize exceptions for enrollees in bona fide programs of vocational cooperative training, work study, other work-oriented programs with the purpose of educating students; (ORC 4109) or,
- ~ employers subject to the FLSA (Bulletin 101, 1991) may utilize the exceptions only for students in Work Experience and Career Exploration Program (WECEP).

Both programs must meet standards established by the State Board of Education or the Federal Administrator of Wage and Hour to qualify for exceptions.

Business and education partners should refer to Exhibit 1 for guidance as they begin to investigate employment opportunities for students fourteen and fifteen years of age. For a variety of reasons, such as, maturity, economic return to employers, safety and training background, hour limitations on employment are more stringent for this age group. Although these limitations may seem obstructive to work-based learning opportunities they should be seen as necessary protections for our youth.

Exhibit 1

Hour Limitations for 14- and 15-Year-Olds

The following standards apply to 14- and 15-year-old youths employed in non-farm jobs.

No person under sixteen (16) shall be employed (4109.07 ORC and FLSA, Bulletin No. 101, 1991):

1. During school hours except where specifically permitted by Chapter 4109 of the ORC or as provided by WECEP;

2. Before seven a.m.;
3. After nine p.m. from the first day of June to the first day of September or during any school holiday of five school days or more duration; or after seven p.m. at any other time;
4. For more than three hours a day in any school day;
5. For more than eighteen hours in any week while school is in session;
6. For more than eight hours in any day which is not a school day;
7. For more than forty hours in any week that school is not in session: nor during school hours unless employment is **not subject to FLSA** and is incidental to bona fide programs of vocational cooperative training, work study, or other work-oriented programs with the purpose of educating students, and the program meets standards established by the State Board of Education.
8. For more than five consecutive hours without allowing the minor a rest period of at least thirty minutes. The rest period need not be included in the computation of the number of hours worked by the minor.

✎ Can any 14-15 year old work experience student be employed in jobs subject to FLSA during school hours?

The Work Experience and Career Exploration Program (WECEP) provisions shown in Exhibit 2 includes special exceptions that permit students fourteen and fifteen years of age to be employed during school hours and in occupations otherwise prohibited by regulation. WECEP is designed to provide a carefully planned work experience and career exploration program for fourteen and fifteen year old youths, including youths in occupational work experience programs, who can benefit from a career-oriented educational program. Designed to meet the participants' needs, interests, and abilities, WECEP helps dropout-prone youths to become reoriented and motivated toward education and helps to prepare them for the world of work.

According to the Division of Career-Technical and Adult Education, the **only Federally approved WECEP, in Ohio, is the Career Based Intervention program**. Approval to operate a WECEP is granted to a representative of the Governor by the U.S. Department of Labor, Administrator of the Wage and Hour Division for a two-year period (STW & FLSA, 1995).

Exhibit 2

Special Provisions for 14- and 15-Year-Olds under WECEP

A state education agency with an educational work experience program may obtain approval from the Department of Labor for work experience enrollees participating in WECEP to be employed:

- up to 3 hours on a school day;
- up to 23 hours during a school week;
- any time during school hours;
- under variances granted by the Federal Wage and Hour Administrator that permit employment of WECEP participants in otherwise prohibited activities and occupations.

NOTE: The Regulations do not permit issuance of WECEP variances in manufacturing, mining, or in any of the 17 Hazardous Occupations orders listed in Exhibit 8.

What hours may 16 & 17 year olds work?

Limits on Hours of Employment of Person Sixteen and Seventeen (Section 4109.07, ORC): According to the FLSA, federal law does not limit either the number of hours nor the time of day that youth sixteen years of age and older may work. However, the State of Ohio specifically limits the hours sixteen and seventeen year olds may be employed, except where specifically permitted by Chapter 4109 of the ORC. This is a situation where the federal and state minor labor laws differ, hence, as was mentioned earlier, the most stringent law applies. In the case of hour limitations for sixteen and seventeen year old youth, business and education partners must adhere to the state regulations.

Who is exempt from hour limitations?

Exceptions to the state limitations on employment hours for sixteen and seventeen year old minors are listed in 4109.06 ORC, on page twenty-one. Any sixteen or seventeen year old minor participating in any one of these categories is not subject to the ORC hour limitations shown in Exhibit 3. For example, sixteen and seventeen year old students participating in a bona fide vocational education program approved by the Ohio Department of Education would be exempted from the hour limitations established by the ORC.

Although these limitations may cause scheduling problems for some business and education partners, past work schedules for minors forced the adoption of these restrictions. Prior to these regulations, an unacceptable number of minors were working well into the early morning hours, which caused serious problems with school attendance, punctuality, and performance during the school day. Given the goals of an educational work-based program, one can easily understand that these limitations provide support for effective education rather than a hindrance.

Exhibit 3

Hour Limitations for 16 and 17 Year-Olds

The following standards apply to 16 and 17 year-old youths employed in non-farm jobs (ORC 4109.07). NO person sixteen or seventeen years of age who is required to attend school under Chapter 3321 of the Revised Code shall be employed:

1. Before seven a.m. on any day that school is in session, except such person may be employed after six a.m. if the person was not employed after eight p.m. the previous night;
2. After eleven p.m. on any night preceding a day that school is in session.
3. For more than five consecutive hours without allowing the minor a rest period of at least thirty minutes. The rest period need not be included in the computation of the number of hours worked by the minor.

Occupational Provisions and Limitations

Can a work experience student work on any job?

Prohibition of the Employment of Minors in Occupations Hazardous or Detrimental to their Health and Well-Being: Section 4109.05 of the Ohio Revised Code states the director of the Ohio Department of Commerce, after consultation with the director of health, shall adopt rules prohibiting the employment of minors in occupations which are hazardous or detrimental to the

health and well-being of minors. In adopting the rules, the director shall consider the orders issued pursuant to the Fair Labor Standards Act of 1938, as amended. The rules adopted and recorded in the Ohio Administrative Code (OAC), 4101:9-2-01 through 4101:9-2-25, are closely aligned to the FLSA, thus the laws of both jurisdictions are more consistent and provide employers a comprehensive list. Actually, Ohio has adopted the federal hazardous occupations restrictions and then added to that list.

Although these limitations may seem restrictive, the focus of both state and federal agencies has been, and will continue to be, to protect the safety and well being of our nation's youth. Business and education partners need to recognize and internalize this focus in their daily activities to strengthen and expand these protections. Educational work-based activities that fail to address these issues may cause situations that conflict with the goals of work-based education and become detrimental to all students.

What are the occupational limitations for 14 & 15 year olds.

Non-farm Occupational Limitations for Fourteen and Fifteen Year-Old Youth: Exhibit 4 lists the occupational limitations for fourteen and fifteen year-old youths that are employed in non-farm jobs. For a variety of reasons, such as, maturity, safety, and training background this age group requires a greater standard of care than older minor employees. Hence, the limitations are more extensive.

Exhibit 4

Occupational Limitations for 14 and 15 Year-Olds

The following standards apply to 14 and 15 year-old youths employed in non-farm jobs.

In addition to the Hazardous Occupations that are **prohibited** for minors under the age of eighteen (18) (see Exhibit 8), fourteen (14) and fifteen (15) year-olds may also not work in the following occupations (4101:9-2-02, OAC & DOL Bulletin No. 101, 1991):

A. Any manufacturing occupation.
B. Any mining occupation.
C. Processing occupations such as filleting of fish, dressing poultry, cracking nuts, or laundering as performed by commercial laundries and dry cleaning (except in a retail, food service, or gasoline service establishment in those specific occupations expressly permitted there in accordance with the foregoing list).
D. Occupations requiring the performance of any duties in workrooms or workplaces where goods are manufactured, mined, or otherwise processed.
E. Public messenger service.
F. Operation or tending of hoisting apparatus or of any power-driven machinery (other than office machines and machines in retail, food service and gasoline service establishments which are not prohibited by other rules).
G. Any occupation found and declared to be hazardous. Occupations not listed can be declared hazardous by the Ohio Department of Commerce or Secretary of Labor.
H. Occupations in connection with:
    (1) Transportation of persons or property by rail, highway, air, on water, pipeline or other means,

(2) Warehousing and storage.
(3) Communications and public utilities.
(4) Construction (including repair). Except office or sales work in connection with paragraphs (H) (1), (2), (3), and (4) when not performed on transportation media or at the actual construction site,

I. Any of the following occupations in a retail food service, or gasoline service establishment:
(1) Work performed in or about boiler or engine rooms.
(2) Work in connection with maintenance or repair of the establishment, machines or equipment.
(3) Outside window washing that involves working from window sills, and all work requiring the use of ladders, scaffolds or their substitutes.
(4) Cooking (except at soda fountains, lunch counters, snack bars, or cafeteria serving counters) and baking.
(5) Occupations which involve operating, setting up, adjusting, cleaning, oiling, or repairing power-driven food slicers and grinders, food choppers and cutters and bakery-type mixers.
(6) Work in freezers and meat coolers and all work in preparation of meats sale (except wrapping, sealing, labeling, weighing, pricing and stocking when performed in other areas).
(7) Loading and unloading goods to and from trucks, railroad cars or conveyors.
(8) All occupations in warehouses except office and clerical work.
(9) Work in connection with cars and trucks involving the use of pits, racks or lifting apparatus or involving the inflation of any tire mounted on a rim equipped with a removable retaining ring.

J. **State Regulation**: For profit door-to-door employment is prohibited unless registered with the Ohio Department of Commerce, Bureau of Wage & Hour (ORC – 4109.21).

K. **Federal Regulation:** operation of lawn mowers, weed trimmers, and riding lawn mowers is prohibited (Title 29, Part 570.34 (a) (6) Code of Federal Regulations). (Although lawn mowing, snow shoveling, and other related employment is permitted under State regulations, 4101:9-2-02 OAC prohibits fourteen and fifteen year olds from using any power driven machinery – Hence, the most stringent applies.)

Exception: Variances granted by the Federal Wage and Hour Administrator may permit employment of WECEP participants in otherwise prohibited activities and occupations (see WECEP Exhibit 2).

Although the restrictions in Exhibit 4 are quite strict on the employment of fourteen and fifteen year-olds, Rule 4101:9-2-02 of the OAC and DOL Bulletin No. 101 does list occupations that are permitted for that age group. The permitted occupations have been determined to be more conducive to the maturity, safety and training levels of this age group. Business and education partners looking for opportunities for students in that age group may find those opportunities in Exhibit #5.

Exhibit 5

Permitted Occupations for 14- and 15-Year-Olds

✎ Are there jobs where 14 & 15 year olds can work?

The following standards apply to 14 and 15 year-old youths employed in Retail, Food Service and Gasoline establishments. Fourteen (14) and fifteen (15) year-olds may be employed in (4101:9-2-02 OAC and DOL Bulletin No. 101, 1991):

(A) Office and clerical work (including operation of office machines).
(B) Cashiering, selling, modeling, art work, work in advertising departments, window trimming and comparative shopping.
(C) Price marking and tagging by hand or by machine, assembling orders, packing and shelving.
(D) Bagging and carrying out customers' orders.
(E) Errand and delivery work by foot, bicycle, and public transportation.
(F) Cleanup work, including the use of vacuum cleaners and floor waxers, and maintenance of grounds, but **not** including the use of power-driven mowers or cutters.
(G) Kitchen work and other work involved in preparing and serving food and beverages, including the operation of machines and devices used in the performance of such work, such as, but not limited to, dishwashers, toasters, dumbwaiters, popcorn poppers, milk shake blenders, and coffee grinders.
(H) Work in connection with cars and trucks if confined to the following:
Dispensing gasoline and oil. Courtesy service on premises of gasoline station;
Car cleaning, washing and polishing;
Other occupations permitted by this section. But **not** including work:
Involving the use of pits, racks or lifting apparatus or involving the inflation of any tire mounted on a rim equipped with a removable retaining ring.
(I) Cleaning vegetables and fruits, and wrapping, sealing, labeling, weighing, pricing and stocking goods when performed in areas physically separate from areas where meat is prepared for sale and outside freezers or meat coolers.

✎ Can minors under fourteen years old work in agriculture jobs?

Occupational Limitations in Agriculture For Minors Under the Age of Fourteen: Unlike non-farm occupations, the allowable ages for minors in agriculture employment extend to a much younger population. In fact, under certain conditions, noted in Exhibit 6, minors working on a farm owned or operated by their parents may work at any age and at any time. However, even though there are special allowances for the employment of minors under the age of fourteen in agriculture occupations, such employment is not recommended as a viable work-based learning experience.

The FLSA establishes minimum ages for covered employment in agriculture unless a specific exemption applies (see exemptions, Exhibit 6 & Exhibit 7 (L)). Covered employment in agriculture includes employees whose occupation involves production of agriculture goods which will leave the state directly or

indirectly through a buyer who will either ship them across state lines or process them as ingredients of other goods which will leave the state as interstate commerce (DOL, 1990).

Exhibit 6

Occupational Limitations in Agriculture for Minors Under Fourteen Years-Old

The employment of minors under the age of fourteen, in agriculture occupations, must comply with the following standards (DOL 1295, 1990 & 4109.06 ORC):

- ~ Youths aged 12 and 13 may work in jobs not declared hazardous outside school hours either with parental consent or on the same farm where their parents are employed;
- ~ Youths under 12 years of age may not work on farms employing workers covered by the minimum wage provisions of the FLSA (farms with more than 500 "man days" of farm labor in any calendar quarter during the preceding calendar year). On all other farms, they may work in non-hazardous jobs outside school hours with written parental consent;
- ~ Local youths 10 and 11 may hand harvest short-season crops outside school hours, under prescribed conditions, for no more than 8 weeks between June 1 and October 15 if their employers have obtained special waivers from the Secretary of Labor;
- ~ Youths of any age may work at any time in any job on a farm owned or operated by their parents, grand parents, or legal guardian, where they are a member of the guardian's household.

Note: The STWOA (1994) clearly states, students participating in work-based learning experiences, regardless of their age, shall be provided with adequate and safe equipment and safe and healthful workplaces in conformity with all health and safety requirements of federal, state, and local law.

Although clearly an option for work-based learning experiences, business and education partners would be wise to avoid creating an employment relationship for students under the age of fourteen. Given the maturity, experience and training levels of this age group the risk factors that accompany employment far outweigh any advantages that could be realized. As an alternative to employment there are far more appropriate career education activities for this age group.

✎ Are the occupational limitations for 14 & 15 year olds different for agriculture jobs?

Occupational Limitations in Agriculture For Fourteen and Fifteen Year-Old Youth: The Fair Labor Standards Act listed eleven hazardous occupations in agriculture that prohibit the employment of minors under the age of sixteen (see Exhibit 7). In addition, the rules adopted for The State of Ohio have restrictions on the same eleven hazardous occupations. Those occupations **prohibited** in agriculture for minors under sixteen years of age are listed in Rule 4101:9-2-03 of the administrative code and in the Department of Labor Bulletin No. 102 (1990). Individuals desiring additional information on these restrictions will find each restriction discussed in detail in the sections referenced.

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Please be aware, the definition of agriculture occupations goes beyond the traditional family farming operation. Examples of employees covered by the DOL Bulletin 102, (1990) include workers who:

~ raise livestock, bees, fur-bearing animals, or poultry;
~ cultivate the soil, grow, or harvest crops;
~ grow or harvest crops as employees of a contractor;
~ work as employees of either the farmer or an independent contractor, and do work on the farm which is incidental to the family farming operation;
~ work as employees of the farmer, and do work off the farm which is incidental to the farming operations.

Child labor provisions may apply to employment in any of the above activities regardless of farm size or number of man-days of farm labor used on that farm.

A combined list of FLSA and OAC hazardous agriculture occupations is provided in Exhibit 7. These limitations may be used to guide business and education participants to work-based learning activities that maintain student health, safety, and well-being.

Exhibit 7

Prohibited Agriculture Occupations for 14 and 15 Year-Olds

The following occupations in agriculture are considered hazardous. No minor under sixteen may be employed at any time in these occupations except as listed under (L) exemptions (4101:9-2-03 OAC and DOL Bulletin No. 102, 1990).

(A) Operating a tractor of over twenty PTO horsepower, or connecting or disconnecting an implement or any of its parts to or from such a tractor.

(B) Operating or assisting to operate (including starting, stopping, adjusting, feeding or any other activity involving physical contact associated with the operation) any of the following machines:
  (1) Corn picker, cotton picker, grain combine, hay mower, forage harvester, hay baler, potato digger, or mobile pea viner;
  (2) Feed grinder, crop dryer, forage blower, auger conveyor, or the unloading mechanism of a non-gravity-type self-unloading wagon or trailer; or
  (3) Power post-hole digger, power post driver, or non-walking-type rotary tiller.

(C) Operating or assisting to operate (including starting, stopping, adjusting, feeding, or any other activity involving physical contact associated with the operation) any of the following machines:
  (1) Trencher or earth moving equipment;
  (2) Fork lift;
  (3) Potato combine; or
  (4) Power-driven circular, band, or chain saw.

(D) Working on a farm in a yard, pen, or stall occupied by a:
  (1) Bull, boar, or stud horse maintained for breeding purposes; or
  (2) Sow with suckling pigs, or cow with newborn calf (with umbilical cord present).

(E) Felling, bucking, skidding, loading, or unloading timber with butt diameter of more than six inches.

(F) Working from a ladder or scaffold (painting, repairing, or building structures, pruning trees, picking fruit, etc.) at a height of over twenty feet.
(G)Driving a bus, truck or automobile when transporting passengers, or riding on a tractor as a passenger or helper.
(H)Working inside:
(1) A fruit, forage, or grain storage designed to retain an oxygen deficient or toxic atmosphere;
(2) An upright silo within two weeks after silage has been added or when a top unloading device is in operating position;
(3) A manure pit; or
(4) A horizontal silo while operating a tractor for packing purposes.
(I) Handling or applying (including cleaning or decontaminating equipment, disposal or return of empty containers, or serving as a flag person for aircraft applying) agricultural chemicals classified under the Federal Insecticide, Fungicide, and Rodenticide Act (7 U.S.C. 135 et seq.) as category I of toxicity, identified by the word "POISON" and the "skull and crossbones" on the label; or category 11 of toxicity, identified by the word "WARNING" on the label.
(J) Handling or using a blasting agent, including but not limited to, dynamite, black powder, sensitized ammonium nitrate, blasting caps, and primer cord; or
(K)Transporting, transferring, or applying anhydrous ammonia.
(L) Exemptions:
(1) These prohibitions do not apply to the employment of minors under eighteen years of age in connection with farms operated by their parents, grandparents or guardian where they are members of the guardian's household.
(2) Minors fourteen and fifteen years old who hold certificates of completion from the 4-H federal extension service training program and the United States office of education vocational agriculture training program for tractor operation or machine operation may work in the occupations for which they have been certified. Occupations for which these certificates are valid are covered by paragraphs (A) and (B) of this rule. Farmers employing minors who are certified under these programs must keep a copy of the certificate of completion on file with the minor employee's record.
(3) Although the FLSA allows student-learners in a bona fide vocational agriculture program to work in the occupations listed in items (A) through (F) of the hazardous occupations order, Rule 4101:9-03 of the OAC limits that exception to items (A) and (B). Since the OAC is more stringent it supersedes the federal exceptions.

Hazardous Occupations in Non-farm Occupations For Minors: The Fair Labor Standards Act lists seventeen hazardous occupations that prohibit the employment of minors under the age of eighteen. Accordingly, the rules adopted for The State of Ohio have restrictions on the same seventeen federal hazardous occupations, plus three additional restricted occupations. Those occupations **prohibited** for minors under eighteen years of age are listed in Rule 4101:9-2-04 through 4101:9-2-23 of the administrative code and in the DOL Bulletin No. 101, (1991). Individuals desiring additional information on

✎ Which occupations are restricted for all minors?

these restrictions will find each restriction discussed in detail in the sections referenced.

✎ Are the occupational limitations in Exhibit 8 only for 16 & 17 year olds?

Please note, the previous occupational limitations were specific to fourteen and fifteen year-old youth. The occupational limitation to be addressed in this section were established for all minors under the age of eighteen. Hence, the limitations to be discussed are specific to sixteen and seventeen year-old youths and in addition to the occupational limitations for minors under the age of sixteen.

Exhibit 8

Occupational Limitations for All Minors

The following standards apply to 16 and 17 year-old and younger youths employed in non-farm jobs.

No minor under the age of eighteen shall be employed in the twenty hazardous occupations listed below. Each restriction includes it's OAC and FLSA section number to assist with the acquisition of further details. Exceptions for special populations are discussed in Exhibit 11 for the seven occupations noted with an asterisk.

HO 1 - manufacturing or storage occupations involving explosives (OAC - 08);

HO 2 - motor vehicle driving and outside helper, including driving motor vehicles (OAC - 17) (daylight driving by 17 year old is exempt if all conditions are met - see conditions Exhibit 9);

HO 3 - coal mine occupations (OAC - 14);

HO 4 - logging and saw milling occupations (OAC - 16);

*HO 5 - power-driven woodworking machine occupations, including the use of saws on construction sites (OAC - 13);

HO 6 - occupations involving exposure to radioactive substances and to ionizing radiation (OAC - 09);

HO 7 - power-driven hoisting apparatus occupations (OAC - 21);

*HO 8 - power-driven metal forming, punching, and shearing machine operations (HO 8 permits the use of a large group of machine tools used on metal, including lathes, turning machines, milling machines, grinding, boring machines and planing machines) (OAC - 11);

HO 9 - occupations in connection with mining, other than coal (OAC -15);

*HO 10 - slaughtering, meat packing or processing, or rendering (OAC -04);

HO 11 - power-driven bakery machine occupations (HO 11 permits the use of a large group of bakery machines including ingredient preparation, product forming and shaping, finishing and icing, slicing and wrapping and pan washing) (OAC - 05);

*HO 12 - power-driven paper products machine occupations, (16 year olds and older may load but not operate a paper baler or box compactor if all conditions are met – see conditions Exhibit 10) (Note, there are many machines not covered by this order. Refer to the OAC or the FLSA for exceptions) (OAC - 10);

HO 13 - manufacture of brick, tile and kindred products (OAC - 06);
*HO 14 - operation of power-driven circular saws, band saws, and guillotine shears (OAC -12);
HO 15 - wrecking, demolition, and ship breaking operations (OAC- 23);
* HO 16 - roofing operations (OAC - 22);

* HO 17 - excavation operations (OAC - 20);
- manufacture of chemicals(OAC -07);
- maritime and longshoreman occupations (OAC - 18); and
- railroad occupations (OAC - 19).

Although there are no restrictions on 16 & 17 year olds concerning lawn mowing, metal blade weed trimmers and riding lawn mowers on the public road for human transportation are prohibited (Federal Title 29, part 570.52).

✎ Can minors handle or be involved with liquor sales?

There are no restrictions on liquor sales at the federal level. **However**, the State of Ohio is very strict on this subject. In Ohio, minors may handle beer or liquor in sealed containers in connection with manufacturing, storage, warehousing, placement, stocking, bagging, loading, or unloading. However, minors may handle beer or liquor in open containers **only if** in connection with cleaning tables or handling empty bottles or glasses. Minors **cannot** handle beer or liquor in open or sealed containers in connection with wholesale, retail, or sales across a bar. Furthermore, minors **cannot** handle beer or liquor in open containers when acting as a waiter or waitress (ORC - 4301.22, Administered by the Ohio Department of Commerce, Division of Liquor Control.)

Exhibit 9

Amendment to FLSA Hazardous Order 2 and OAC – 17

✎ *What are the specific driving restrictions for work experience students under 18 years old?*

Public Law 105-334, which is in conformity with Ohio Laws and Policies, became effective on October 31, 1998, amending the FLSA to modify Hazardous Order 2. The major change implemented by the amendment sets a minimum age of 17 for any on-the-job driving on public highways. Currently, Hazardous Order 2 reads "No employee under 17 years of age may drive on public roadways as part of his or her job if that employment is subject to the FLSA".

Seventeen year olds may drive on public roadways as part of their employment, but **only if** all of the following requirements are met:

1. The driving is limited to daylight hours;
2. The 17 year old holds a State license valid for the type of driving involved in the job;
3. The 17 year old has successfully completed a State approved driver education course and has no record of any moving violation at the time of hire;
4. The automobile or truck is equipped with a seat belt for the driver and any passengers and the employer has instructed the youth that the seat belts must be used when driving the vehicle;

5. The automobile does not exceed 6,000 pounds gross vehicle weight;
6. The driving may **not** involve:
   a. towing vehicles;
   b. Route deliveries or route sales;
   c. Transportation for hire of property, goods, or passengers;
   d. Urgent, time-sensitive deliveries;
   e. Transporting more than three passengers, including employees of the employer;
   f. Driving beyond a 30 mile radius from the youth's place of employment;
   g. More than two trips away from the place of employment in any single day to deliver the employer's goods to a customer (other than urgent, time-sensitive deliveries which are prohibited);
   h. More than two trips away from the place of employment in any single day to transport passengers, other than employees of the employer; and,
7. Such driving is only occasional and incidental to the 17 year old's employment. This means that the youth may spend no more than one-third of the work time in any workday and no more than 20 percent of the work time in any workweek driving.

Exhibit 10

Amendment to FLSA Hazardous Order 12 and OAC – 10

Effective August 6, 1996, Public Law 104-174, which is in conformity with Ohio Laws and Policies, amends section 13© of the FLSA to modify Hazardous Order 12 permitting minors 16 years of age or older to load - - but **not** operate or unload - - certain paper balers and box compactors **ONLY IF** all of the following requirements are met:

1. The employer must ensure that the equipment meets, and continues to meet, the American National Standards Institute's Standard ANSI Z245.5-1990 for scrap paper balers or Standard ANSI Z245.2-1992 for paper box compactor.
2. Prior to permitting minors under the age of 18 to load balers and compactors, the employer must provide a notice and post a notice on each piece of equipment that:
   a. The equipment meets the appropriate ANSI standard named above;
   b. 16 and 17 year olds may only load the equipment;
   c. Any employee under the age of 18 may not operate or unload such equipment.
3. The equipment must include an on-off switch incorporating a key-lock or other system, and the control of the system must be maintained in the custody of employees who are 18 years of age or older.
4. The on-off switch of the equipment must be in an off position when the equipment is not in operation.
5. The equipment cannot be operated while it is being loaded.

Are there any exceptions for special occupations?

As mentioned in Exhibit 8, Exhibit 11 illustrates there are special provisions for sixteen (16) and seventeen (17) year old student-learners and apprentices employed in non-farm jobs. According to the DOL, Hazardous Occupations Orders No. 5, 8, 10, 12, 14, 16, and 17 contain exemptions for 16 and 17-year-old apprentices and student-learners provided they qualify for those exemptions. The qualifications require both groups to meet the definition and governing regulations for their employment positions.

What are the qualifications for student learners?

Please note, the federal and state definitions for student-learners differ slightly. The DOL defines student-learner as "a student enrolled in a course of study and training in a cooperative vocational training program under a recognized state or local education authority or in a course of study in a substantially similar program conducted by a private school" (DOL 1330, 1991). Chapter 4109.06 of the ORC, on the other hand, does not mention exemptions for a course of study in a substantially similar program conducted by a private school. Since the state regulation is more stringent, only students participating in a vocational education program approved by the Ohio Department of Education would be eligible for the exemptions cited in Exhibit #8.

Exhibit 11

Exemptions From Hazardous Occupations Orders for Sixteen and Seventeen Year Old Youths

The seven hazardous occupations identified with an asterisk in Exhibit # 8 permit the employment of apprentices and student-learners enrolled in vocational education programs under certain conditions.

Apprentices:

(1) the apprentice is employed in a craft recognized as an apprenticeable trade;
(2) the work of the apprentice in the occupations declared particularly hazardous is incidental to his or her training;
(3) such work is intermittent and for short periods of time and is under the direct and close supervision of a journeyman as a necessary part of such apprentice training; and
(4) the apprentice is registered by the Bureau of Apprenticeship and Training of the U.S. Department of Labor as employed in accordance with the standards established by that Bureau, or is registered by a state agency as employed in accordance with the standards of the state apprenticeship agency recognized by the Bureau of Apprenticeship and Training, or is employed under a written apprenticeship agreement and conditions which are found by the Secretary of Labor to conform substantially with such federal or state standards.

Student-Learners:

(1) The student-learner is enrolled in a course of study and training in a cooperative vocational training program recognized by the Ohio Department of Education; and
(2) such student-learner is employed under a written agreement which provides

(a) that the work of the student-learner in the occupations declared particularly hazardous shall be incidental to the training;
(b) that such work shall be intermittent and for short periods of time, and under the direct and close supervision of a qualified and experienced person;
(c) that safety instructions shall be given by the school and correlated by the employer with on-the-job training, and
(d) that a schedule of organized and progressive work processes to be performed on the job shall have been prepared.

Each written agreement shall contain the name of the student-learner, and shall be signed by the employer and the school coordinator or principal. Copies of each agreement shall be kept on file by both the school and the employer. This exemption for the employment of student-learners may be revoked in any individual situation where it is found that reasonable precautions have not been observed for the safety of minors employed thereunder. A high school graduate may be employed in an occupation in which training has been completed as provided in this paragraph as a student-learner, even though the youth is not yet eighteen years of age (DOL 1330, 1991).

Summary

As was mentioned at the beginning of this section, business and education partners operating within The State of Ohio have an obligation to obtain, refer to, and become familiar with both state and federal minor labor laws. Although the two laws differ slightly on occasion, both have the same central focus. Both laws were designed to protect the safety, health, and well-being of our nation's youth. Business and education partners must adopt this same consciousness in order to fulfill the goals of educational work-based education and enhance the protection of our youth as they experience work-based learning environments.

Minimum Wages and Overtime

In addition to record keeping and child labor provisions, the Fair Labor Standards Act and the Ohio Revised Code provide regulations for minimum wages and overtime. Administered by the Department of Labor and the Ohio Bureau of Employment Services, Wage and Hour Divisions, most employees in the Ohio must be paid at least a minimum wage and overtime pay at time and one-half the regular rate of pay after 40 hours in a workweek. Since the state and federal regulations differ to some degree, they will be discussed separately in this section. Business and education partners will need to address the appropriate regulations to assure their activities are in compliance.

Ohio Minimum Wages and Overtime

✎ Are there big differences between federal and state wage laws?

Regulations governing minimum wages and overtime are provided in sections 4111.01 to 4111.30 of the Ohio Revised Code (ORC). For the most part, these regulations are consistent with the Fair Labor Standards Act (FLSA), which should reduce the confusion as one applies the intent of federal and state law. However, as mentioned earlier, when the two governing regulations differ, the most stringent still applies.

Section 4111.01 of the revised code provides definitions to guide employers to the appropriate employment practices. The most applicable definition to this discussion involves the interpretation of an employee. According to 4111.01 (D) (Dunn & Brann, 1998), "employee" means any individual employed by an employer but does **not** include any individual employed:

✎ Are some employees excluded from minimum wages and overtime?

- ~ by the United States;
- ~ as a baby-sitter or live in companion whose duties do not include housekeeping;
- ~ as an outside salesperson compensated by commission or a bona fide executive, administrator, or professional capacity as defined by FLSA;
- ~ to deliver newspapers;
- ~ as farm workers by anyone who used no more than 500 "man-days" of farm labor in any calendar quarter during the preceding year or if the employee is the parent, spouse, child or other member of the employer's immediate family;
- ~ by a police or fire protection agency or student employed on a part-time or seasonal basis by a political subdivision;
- ~ by a camp or recreational area for children under eighteen years old and owned and operated by a nonprofit organization;
- ~ by a school on in-school placement;
- ~ directly by the house of representatives or directly by the senate; and,
- ~ who works or provides personal services of a charitable nature in a hospital or health institution for which compensation is not sought or contemplated.

According to 4111.01 (D) of the ORC, by virtue of their non employee status, the minimum wage and overtime regulations do not apply to these individuals (Dunn & Brann, 1998).

MINIMUM WAGES & OVERTIME

What is the Ohio minimum wage?

Minimum Wages: The Ohio State Legislature established that every employer shall pay each of his/her employees a minimum wage of not less than three dollars and eighty cents an hour beginning on September 25, 1990, and not less than four dollars and twenty-five cents an hour after March 1, 1991, except as otherwise provided in section 4111.02. Special provisions affecting minimum wages cited in 4111.02 of the ORC include:

- ~ a learner wage rate for cooperative vocational education students equal to eighty percent of the applicable minimum wage (see 4111.02 (B) and subminimum wage below);
- ~ an adjustment of the applicable minimum wage for certain employees in agriculture (see 4111.02 (C) for details);
- ~ employees engaged in an occupation where they commonly receive tips (see 4111.02 (D) for details);
- ~ employers with less than one hundred fifty thousand dollars gross annual sales (see 4111.02 (E) for details);
- ~ any employer defined as an enterprise under the FLSA of 1938 (see 4111.02 (F) for details); and,
- ~ any employer whose annual gross volume of sales is less than the dollar amounts specified in the FLSA but more than one hundred fifty thousand dollars, shall pay: not less than three dollars and thirty-five cents an hour beginning on September 25, 1990 (see 4111.02 (G) for details) (Dunn & Brann, 1998).

Since the minimum wage rate can be adjusted by the Ohio State Legislature at any time, business and education partners will need to refer to the minimum wage rates periodically to stay aligned with the appropriate wage.

Does Ohio law allow work experience students to be paid a subminimum wage?

Subminimum Wage: Since the state and federal subminimum wage regulations differ, business and education partners need to review the regulations applicable to their individual situations carefully. For example, the ORC 4111.02 (B) (Dunn & Brann, 1998) allows a subminimum wage of eighty percent for one hundred eighty days, while the FLSA requires a four dollar and twenty-five cents subminimum for only ninety days. Furthermore, the ORC regulation applies to cooperative vocational education students, while the FLSA subminimum wage regulations apply to student learners, apprentice, and the disabled. Even state regulations differ between vocational students (180 day maximum) and registered student apprentices (ninety day maximum).

Employers not governed by the FLSA are responsible only to state law, while employers governed by FLSA must meet the mandates of both laws if they choose to apply for subminimum wage certificates. If the two governing regulations differ, the most stringent always applies.

Do state and federal overtime regulations differ?

Overtime: Regulations established for overtime by 4111.03 of the ORC are consistent with and referenced to the FLSA. According to 4111.03, an employer shall pay an employee for overtime at a wage rate of one and one-half times the employee's wage rate for hours worked in excess of forty hours in one workweek. Employees employed in agriculture shall not be covered by these overtime provisions. Additional provisions are also provided for county employees in section 4111.03 (B, C, & D) (Dunn & Brann, 1998). Business and education partners should refer to the federal overtime provisions for guidance.

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Federal Minimum Wages and Overtime

What is the federal minimum wage?

The Fair Labor Standards Act (FLSA) establishes minimum wage, overtime pay, record keeping, and child labor standards affecting full-time and part-time workers in the private sector and in federal, state, and local governments. In August 1996, the Fair Labor Standards Act was amended to provide a two-step increase in the minimum wage and a subminimum rate for youth during their first ninety days of employment. The amendment also changed certain provisions of the FLSA with respect to the tip credit that can be claimed by employers of "tipped employees", an exemption for certain computer professionals, and home-to-work travel time in employer-provided vehicles. The amendment that affect minors is summarized below.

~ The FLSA minimum wage increased to $4.75 an hour on October 1, 1996, and to $5.15 an hour on September 1, 1997 (West Group, 1999).

What is the sub-minimum wage rate?

~ A subminimum wage -- $4.25 an hour - is permitted for employees under twenty years of age during their first ninety consecutive calendar days of employment with an employer. This does not apply, however, to migrant or seasonal agriculture workers and H-2A nonimmigrant agriculture workers performing work of a temporary or seasonal nature (DOL 1282, 1992).

~ Employers are prohibited from displacing employees in order to hire youth at the subminimum wage. Also prohibited are partial displacements such as reducing employees' hours, wages, or employment benefits (DOL 1282, 1998).

How does federal law apply to "tipped" employees?

~ An employer may credit a certain amount of the tips received by tipped employees (e.g., waiters and waitresses) against the employer's minimum wage obligation when certain conditions are met. The law now sets the employer's cash wage obligation at not less than $2.13 an hour. This replaces the former provision requiring that tipped employees be paid at least fifty percent of the minimum wage in cash. However, if an employee's tips combined with the employer's cash wage of $2.13 an hour do not equal the minimum hourly wage, the employer must make up the difference (DOL 1282, 1998).

Are some employers excluded from federal minimum wages and overtime?

Some employers are excluded from the overtime pay provisions or both the minimum wage and overtime pay provisions by specific exemptions. Although the following list does not contain all the possible exempt occupations, it does provide examples of those that might apply to work-based leaning activities.

<u>Exemptions from Both Minimum Wage and Overtime Pay:</u>

~ employees of certain seasonal amusement or recreational establishments or employees of small newspapers;

~ employees engaged in fishing operations, and newspaper delivery;

~ executive, administrative, and professional employees, outside sales employees, and employees in certain computer-related occupations;

~ farm workers employed by anyone who used no more than 500 "man-days" of farm labor in any calendar quarter during the preceding calendar year;

~ casual baby-sitters and persons employed as companions to the elderly or infirm.

<u>Exemptions from Overtime Pay Provisions Only:</u>

~ certain highly paid commissioned employees of retail or service establishments;
~ domestic service workers residing in the employer's residences;
~ announcers, news editors, and chief engineers of certain non-metropolitan broadcasting stations;
~ employees of motion picture theaters; and
~ farm workers.

Partial Exemptions from Overtime Pay:

~ employees engaged in certain operations on agriculture commodities and certain bulk petroleum distributors;
~ hospitals and residential care establishments may adopt, by agreement with their employees special work week arrangements under certain conditions;
~ employees who lack a high school diploma, or who have not attained the educational level of the 8th grade, can be required to spend up to 10 hours in a work week engaged in remedial reading or training in other basic skills without receiving overtime pay (training must not be job specific).

Because these exemptions are narrowly defined under FLSA, an employer should carefully check the exact terms and conditions for each with their local wage-hour offices (DOL 1282, 1998).

✎ How does an employer qualify to pay subminimum wages?

Subminimum Wages: The FLSA also provides for the employment of certain individuals at wage rates below the statutory minimum. Such individuals include student-learners (vocational education students) and student apprentices, as well as full-time students in retail or services establishments, agriculture or institutions of higher education. Also included are individuals whose earning or productive capacity is impaired by a physical or mental disability, including those related to age or injury, for the work to be performed. Employment at less than the minimum wage is provided for in order to prevent curtailment of opportunities for employment. Such employment is permitted only under certificates issued by the Federal Wage-Hour Division (DOL 1282, 1998).

The subminimum wage eligibility period runs for ninety consecutive calendar days (DOL 1282, 1998). The ninety days period starts with the first day of work for the employer and is counted as consecutive days on the calendar. It does not matter how many days during this period the youth actually performs any work. A break in service does not affect the calculation of the ninety day period of eligibility. For example, if the student reported for work for the first time on February first, the subminimum eligibility period would expire ninety days from that point even if the student only worked one day.

Other regulations affecting the subminimum wage include:

~ more than one employer may employ the same student for a ninety day eligibility period;
~ the same employer may **not** employ the same student for more than one eligibility period;
~ the employer is **not** required to meet any training requirements in order to pay an eligible employee the subminimum rate;
~ the subminimum wage **can not** be combined with other subminimum wages some students are eligible for to pay less than the four dollars and twenty-five cents;

- ~ the four dollar and twenty-five cent rate **did not** increase when the minimum wage increased on September 1, 1997;
- ~ employers may **not** displace any employee for the purpose of employing someone at the youth rate; and,
- ~ an employer **can not** hire only employees under twenty years of age at the subminimum wage and employ them for only ninety days each (DOL Fact Sheet, 1997).

What if regular employees are illegally displaced?

If regular employees are illegally displaced by youth paid subminimum wages, they are entitled to "make whole" relief. This would include reinstatement to their previous or equivalent position of employment, payment of lost wages and benefits.

As was mentioned earlier, employment at less than the minimum wage is provided for in order to prevent curtailment of opportunities for employment. Operating beyond the limits of this legislation is illegal, and should not be condoned by business and education partners.

How can an employer qualify a student-learner for subminimum wages?

Employment of Student Learners at Subminimum Wage: The regulations contained in *Title 29, Part 520: Employment of Student Learners* (DOL 1343, 1982) are issued in accordance with section 14 of the Fair Labor Standards Act of 1938, as amended, to provide for the employment, under special certificates, of student-learners at wages lower than the minimum wage applicable under section 6 of the FLSA. Such certificates are subject to the terms and conditions established in Part 520.

In part 520.2 the Department of Labor (DOL) defines a "student-learner" as a student who is receiving instruction in an accredited school, college or university and who is employed on a part-time basis, pursuant to a bona fide vocational training program. The DOL then defines a "bona fide vocational training program" as one authorized and approved by a State board of Vocational Education or other recognized educational body and provides for part-time employment training which may be scheduled for a part of the work day or work week, for alternating weeks or for other limited periods during the year. The part-time employment training is supplemented by and integrated with a definitely organized plan of instruction designed to teach technical knowledge and related information given as a regular part of the student-learner's course by an accredited school, college, or university (DOL 1343, 1982).

Whenever the employment of a student-learner at wages lower than the minimum wage is believed necessary to prevent curtailment of opportunities for employment, an application for a special certificate authorizing the employment of such student-learner at subminimum wages shall be filed. Application must be filed, in duplicate, by the employer with the authorized representative of the U.S. DOL, Administrator of Wage and Hour (520.2(a), DOL 1343, 1982). The application must be made on the official form furnished by the Division and must be signed by the employer, the appropriate school official and the student-learner. The application must contain all information required by such form, including:

- ~ a statement clearly outlining the vocational training program and showing, particularly, the processes in which the student-learner will be engaged when in training on the job;
- ~ a statement clearly outlining the school instruction directly related to the job;

~ the total number of workers employed in the establishment;
~ the number and hourly wage rate of experienced workers employed in the occupation in which the student-learner is to be trained;
~ the hourly wage rate or progressive wage schedule which the employer proposes to pay the student-learner;
~ data regarding the age of the student-learner;
~ the period of employment training at subminimum wages;
~ the number of hours of employment training a week;
~ the number of hours of school instruction a week; and,
~ a certification by the appropriate school official that the student named therein will be receiving instruction in an accredited school, college or university and will be employed pursuant to a bona fide vocational training program, as defined in 520.2(b) (DOL 1343, 1982).

✎ What are the conditions to be a student learner?

According to part 520.5 (DOL 1343, 1982) the following conditions must be satisfied before a special certificate may be issued authorizing the employment of a student-learner at subminimum wages:

(a) Any training program under which the student-learner will be employed must be a bona fide vocational training program as defined in 520.2;
(b) The employment of the student-learner at subminimum wages authorized by the special certificate must be necessary to prevent curtailment of opportunities for employment;
(c) The student-learner must be at least sixteen years of age (or older) as may be required pursuant to paragraph (d) of this section;
(d) The student-learner must be at least 18 years of age if he or she is to be employed in any activity prohibited by virtue of a hazardous occupation (noting the specific exemptions for student-learners);
(e) The occupation for which the student-learner is receiving preparatory training must require a sufficient degree of skill to necessitate a substantial learning period;
(f) The training must not be for the purpose of acquiring manual dexterity and high production speed in repetitive operations;
(g) The employment of a student-learner must not have the effect of displacing a worker employed in the establishment;
(h) The employment of the student-learners at subminimum wages must not tend to impair or depress the wage rates or working standards established for experienced workers for work of a like or comparable character;
(I) The occupational needs of the community or industry warrant the training of student-learners;
(j) There are no serious outstanding violations of the provisions of a student-learner certificate previously issued to the employer, or serious violations of any other provisions of the Fair Labor Standards Act of 1938, as amended, by the employer which provide reasonable grounds to conclude that the terms of the certificate would not be complied with, if issued;
(k) The issuance of such a certificate would not tend to prevent the development of apprenticeship in accordance with the regulations or would not impair established apprenticeship standards in the occupation or industry involved;
(l) The number of student-learners to be employed in one establishment must not be more than a small proportion of its working force;

(m) An employee who has been paid at the training wage for 90 days may be employed at the training wage for 90 additional days by a different employer, if that employer provides on-the-job training in accordance with rules issued by the Department of Labor (DOL 1282, 1992); and,

(n) The number of hours of work paid at the training wage cannot exceed 25% of all the hours worked by employees of an establishment in any month (DOL 1282, 1992).

Further terms and Conditions of Employment Under Special Student-Learner Certificates are described in part 520.6 (DOL 1343 1982). They include:

(a) The special minimum wage rate shall be not less than 75 percent of the applicable minimum of the FLSA;

(b) No special student-learner certificate may be issued retroactively;

(c) (1) The number of hours of employment training each week at subminimum wages pursuant to a certificate, when added to the hours of school instruction, shall not exceed 40 hours without specific authorization;

(2) When school is not in session on any school day, the student-learner may work a number of hours in addition to the weekly hours of employment training authorized by the certificate, provided the total hours worked shall not exceed 8 hours on any such day;

(3) During the school term, when school is not in session for the entire week, the student-learner may work at his employment training a number of hours in the week in addition to those authorized by the certificate, provided the total hours shall not exceed 40 hours in any such week; and,

(d) A special student-learner certificate shall not constitute authorization to pay a subminimum wage rate to a student-learner in any week in which he or she is employed for a number of hours in addition to the number authorized in the certificate, except as provided in paragraphs (c)(1), (2), and (3) or this section.

✎ Are there any special records required for student-learners employed at subminimum

In addition to any other records required under the record-keeping regulations, part 520.7, DOL 1343 (1982) requires the employer shall keep the following records specifically relating to student-learners employed at subminimum wage rates:

(a) Any worker employed as a student-learner shall be identified as such on the payroll records, with each student-learner's occupation and rate of pay being shown;

(b) The employer's copy of the application, filed in accordance with 520.4(a) and any certificate issued by the Administrator or his authorized representative must be available at all times for inspection for a period of 3 years from the last date of employment of the student-learner; and,

(c) Notations should be made in the employer's records when additional hours are worked by reason of school not being in session as provided in 520.6(c) (2) and (3).

✎ How can an employer qualify apprentices for subminimum wages?

Employment of Apprentices at Subminimum Wages: The Department of Labor provides guidelines for the employment of apprentices at subminimum wages in *Title 29, Regulations, 521: Employment of Apprentices* (DOL 1343, 1980). The regulations include: definitions regarding the employment of

apprentices; standards of apprenticeship; criteria for a skilled trade; and the procedure for employment of an apprentice at subminimum wages. Business and education partners considering the employment of minor apprentices at subminimum wages will need to acquire DOL publication 1343 and adhere to the regulations therein.

The information contained in this section represents excerpts taken directly from *Title 29, Regulations, 521: Employment of Apprentices* . These excerpts are provided only as guidelines and are not meant to be a complete reflection of the regulations. Specific questions and detailed explanations of any concept should be derived from the actual regulations, the United States Department of Labor Bureau of Apprenticeship (BAT), or the State Bureau of Apprenticeship Training recognized by the DOL.

According to the DOL, the Wage and Hour Administrator or his/her authorized representative shall issue special certificates to employers or joint apprenticeship committees authorizing the employment of apprentices in skilled trades at wages lower than the minimum wage applicable under section 6 of the Fair Labor Standards Act of 1938, as amended. The special certificates issued, to the extent necessary in order to prevent curtailment of opportunities for employment, are subject to the conditions and limitations prescribed in *part 521: Employment of Apprentices* (DOL 1343, 1980).

✎ What is an apprentice?

In part 521.2 (DOL 1343, 1980), the Department of Labor defines an apprentice as a worker at least sixteen years of age, except where a higher minimum age standard is otherwise fixed by law, who is employed to learn a skilled trade in conformity with the standards of apprenticeship as set forth in Part 521.3. The apprentice must be: registered with the Bureau of Apprenticeship Training; in a program approved by BAT; and, have a written agreement between an apprentice and either his/her employer or a joint apprenticeship committee, which contains the terms and conditions of the employment and training.

✎ What are the standards for apprenticeship?

An approved apprenticeship program must conform with the standards of apprenticeship before the Administrator or his/her authorized representative will issue a special certificate authorizing employment of an apprentice at wages lower than the minimum wage. Some of the more notable standards include:

- ~ employment and training must be in a skilled trade that requires one year or more (2,000 or more hours) work experience and has a progressively increasing schedule of wages;
- ~ a schedule of work processes or operations in which experience is to be given on the job;
- ~ the apprenticeship program and the apprenticeship agreement registered with BAT;
- ~ adequate facilities for training and supervision of the apprentice and the keeping of appropriate records concerning his/her progress; and,
- ~ an organized and systematic form of related instruction (144 hours a year) which is designed to provide the apprentice with knowledge of the theoretical and technical subjects related to his/her trade.

Please note this is not a complete list of the standards of apprenticeship. Business and education partners need to refer to part 521.3 of the regulations for a complete list.

✎ Does any occupation qualify as a skilled trade?

Business and education partners need to be aware, not every occupation qualifies as a skilled trade (section 521.4, DOL 1343, 1980). Apprenticeable skilled

trades are clearly identified and commonly recognized throughout an industry as being customarily learned (2,000 or more hours) in a practical way through training and work experience on the job, with supplemental related instruction. An apprenticeable occupation involves the development of skill sufficiently broad enough to be applicable in like occupations throughout an industry, rather than of restricted application to the products of any one company. Selling, retailing, or similar occupations in the distributive field, managerial, clerical, professional and semi-professional occupations do not fall into the skilled trades categories.

✎ What is the procedure for employing an apprentice at subminimum wage?

The procedure for employing an apprentice at subminimum wages (521.5) requires a registered apprenticeship program, an apprenticeship agreement with each apprentice, a registered apprentice, and application to the appropriate Regional Office of the Wage and Hour Division, United States Department of Labor. If the apprenticeship agreement and other available information indicate that the requirements of regulations 521 are satisfied the Administrator or his/her authorized representative shall issue a special certificate (521.6).

An apprenticeship program which has been registered with a recognized apprenticeship agency shall constitute a temporary special certificate authorizing the employment of an apprentice at the wages and under the conditions specified in such program until a special certificate is issued or denied. This temporary authorization is, however, conditioned on the requirement that within ninety days from the beginning date of employment of the apprentice, the employer or the joint apprenticeship committee shall satisfy all the requirements of the BAT.

Each special certificate shall specify the conditions and limitations under which it is granted, including the name of the apprentice, the skilled trade in which he or she is to be employed, the subminimum wage rates and the periods of time during which such wage rates may be paid (521.7).

A special certificate will not be issued where there are serious outstanding violations involving the employee whom an apprentice certificate is being requested, or where there are any serious outstanding violations of a certificate previously issued, or where there have been any serious violations of the Act which provide reasonable grounds to conclude that the terms of a certificate may not be complied with, if issued (521.6).

Employment of Workers With Disabilities Under Special Certificates: The following information is provided to guide business and education partners as they seek employment opportunities for students with disabilities. The information contained in this section represents excerpts taken directly from *Title 29, Regulations, Part 525: Employment of Workers With Disabilities Under Special Certificates.* These excerpts are provided only as guidelines and are not meant to be a complete reflection of the regulations. Specific questions and detailed explanations of any concept should be derived from the actual regulations or United States Department of Labor, Wage and Hour Division.

✎ Can employers pay less than minimum wages to employees with disabilities?

The Fair Labor Standards Act prohibits paying less than minimum wage to employees with disabilities unless they qualify for and have a special minimum wage certificate. The special minimum wage is defined in *Title 29, Regulations, Part 525: Employment of Workers With Disabilities Under Special Certificates*

(DOL 1249, 1989) as a wage, authorized under a certificate issued to an employer, that is less than the statutory minimum wage.

✎ How is the special minimum wage determined?

The special minimum wage paid to a worker with a disability is based on the worker's individual productivity in proportion to the wage and productivity of experienced non-disabled workers performing essentially that same type, quality, and quantity of work in the same vicinity as the disabled worker. For example, the special wage of a disabled worker who is 75% as productive as the average experienced non-disabled worker would to be set at 75% of the wage paid to the non-disabled worker. An individual whose earning or productive capacity is not impaired for the work being performed cannot be employed under a special minimum wage certificate and must be paid at least the applicable minimum wage.

The Fair Labor Standards Amendments of 1986 substantially revised those provisions of the Fair Labor Standards Act of 1938, permitting the employment of individuals disabled, for the work to be performed, at special minimum wage rates below the rate that would otherwise be required by statute. These provisions are codified at section 14 (c) of the FLSA and:

- ~ provide for the employment, under certificates of individuals with disabilities, at special minimum wage rates which are commensurate with those paid to workers not disabled, who are employed in the same vicinity for essentially the same type, quality, and quantity of work;
- ~ require employers to provide written assurances that wage rates of individuals on special minimum wage certificates, paid on an hourly rate basis, be reviewed at least once every six months and that the wages of all employees be reviewed at least annually to reflect changes in the prevailing wages paid to experienced individuals not disabled; and,
- ~ provide that any employee receiving the special minimum wage rate pursuant to section 14(c), or the parent or guardian of such an employee, may petition for a review of that wage rate by an administrative law judge.

✎ What are the conditions to pay disabled employees special minimum wage?

In conformance with the Individuals with Disabilities Education Act (IDEA), individualized education programs are developed to provide students with disabilities an opportunity to learn about work in realistic settings, which assists disabled students in the transition from school to life in the community. To prevent the curtailment of opportunities for work in realistic settings, students with disabilities may be paid special minimum wage rates. However, to qualify for those rates the following criteria must be considered:

- ~ the nature and extent of employed individuals' disabilities as these disabilities relate to the individuals' productivity;
- ~ the prevailing wages of experienced employees, employed in the same vicinity, who are not disabled and are engaged in work comparable to that performed by an individual at the special minimum wage rate;
- ~ the productivity of the workers with disabilities compared to the norm established for non-disabled workers through the use of a verifiable work measurement method or the productivity of experienced non-disabled workers employed in the vicinity on comparable work; and,
- ~ the wage rates to be paid to the workers with disabilities for work, comparable to that performed by experienced non-disabled workers.

Any special minimum wage certificate issued shall specify the terms and conditions under which it is granted. The terms and conditions of such certificate will be made available, orally and in writing, to each worker with a disability and, where appropriate, a parent or guardian of the worker. This requirement may be satisfied by making copies of the certificate available. Where a worker with disabilities displays an understanding of the terms of a certificate and requests that other parties not be informed, it is not necessary to inform a parent or guardian.

What records must be maintained for disabled employees receiving a subminimum

In addition to the terms and conditions of the certificate, every employer, or where appropriate the referring agency or facility, or workers employed under special minimum wage certificates shall maintain and have available for inspection records indicating:

- ~ verification of the workers' disabilities;
- ~ evidence of the productivity of each worker with a disability gathered on a continuing basis or at periodic intervals (not to exceed six months in the case of employees paid hourly wage rates):
- ~ the prevailing wages paid workers not disabled for the job performed who are employed in the same vicinity for essentially the same type of work using similar methods and equipment as that used by each worker with disabilities employed under a special minimum wage certificate;
- ~ the production standards and supporting documentation for non-disabled workers for each job being performed by workers with disabilities employed under special certificates; and,
- ~ the records required under all of the applicable provisions of Part 516 of this title, except that any provision pertaining to homeworker handbooks shall not be applicable to workers with disabilities who are employed by a recognized nonprofit rehabilitation facility and working in or about a home, apartment, tenement, or room in a residential establishment (See §525.15). Records required by this section shall be maintained and preserved for the periods specified in Part 516 of this title.

Application for a certificate may be filed by any employer with the Regional Office of the Wage and Hour Division having administrative jurisdiction over the geographic area in which the employment is to take place. The employer shall provide answers to all of the applicable questions contained on the application form and shall be signed by the employer or the employer's authorized representative.

Summary

Minimum wages, overtime and subminimum wage regulations vary from state to federal, from employer to employer and from employee to employee. Business and education partners should familiarize themselves with these

regulations, then refer to the complete documents or contact the respective wage and hour divisions if they have concerns or questions regarding any situation.

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Unemployment Compensation

✎ Must employers pay unemployment compensation for students on work-based learning experiences?

The educational relationships and short term nature of many work-based learning activities raises questions regarding the application of unemployment compensation laws to these activities. For the most part, work-based learning employment relationships are entered into with the understanding there is no guarantee of employment at the end of the experience. For paid work-based learning experiences this poses two questions: are employers required to pay unemployment premiums for these students; and, or may the student employees receive unemployment compensation at the conclusion to the work-based learning experience? According to 4141.01(B)(3)(e)(ii) of the Ohio Revised Code (ORC) and the Ohio Department of Job and Family Services the answer to both questions is no.

The Ohio Department of Job and Family Services position is, that certain types of employment are specifically excluded from coverage under the unemployment compensation laws. Wages paid to non-covered employees are not subject to the payment of contributions, nor can they be used in establishing a claimant's eligibility for unemployment benefits for the computation of benefits amounts. Those employers who have students who meet all of the exclusionary requirements of Section 4141.01(B)(3)(e)(ii) of the ORC, are not required to report such students for unemployment compensation tax purposes.

✎ Under what circumstances can student workers be excluded from unemployment compensation?

To meet the eligibility requirements of 4141.01(B)(3)(e)(ii) of the Ohio Revised Code the student must be enrolled at a nonprofit or public educational institution which normally maintains a regular faculty and curriculum. The educational institution must have organized body of students in attendance at the place where its educational activities are carried on, and the student must be enrolled, for credit, in a full-time program, which combines academic instruction with work experiences. Furthermore, the work experience service must be an integral part of the program, and the educational institution has so certified that fact to the employer.

The Ohio Department of Job and Family Services views a student participating in a work study program as one who is required, by the education institution's schedule of curriculum, to perform certain types of work experience services which will aid them in their studies. In contrast, the unemployment compensation exclusion shall not apply to work experience service performed in a program established for or on behalf of an employer or group of employers.

✎ Does the exclusion apply to summer employment?

In situations where the students do not meet all of the exclusionary requirements (e.g., not performing services of the student's schooling or by merely working to earn extra money), the services performed would be deemed employment and the employer would be required to report the wages and pay contributions on the remuneration received by the student. Furthermore, this exclusion does not apply to work performed after the student's graduation, or to work performed during summer vacation periods, unless the summer employment is monitored, part of a year long curriculum, and the student is enrolled for credit.

LIABILITY

✎ Should liability be a significant obstacle to work-based learning activities?

Business and education partners have raised a number of insurance and liability concerns regarding injuries or accidents associated with students in a work-site learning environment. Some of the most common concerns include: liability; insurance coverage; workers' compensation; risk management; and assuring the health and safety of student participants. While many initial questions have been raised about the possibility of additional costs and complications of having students in the workplace, Goldberger, et. al. claimed (1994, p.81) that the issue of insurance and liability does not appear to be as significant an obstacle to employer participation as many fear.

✎ Did the STWOA change any liability laws?

One of the most significant pieces of federal legislation that impacted work-based learning, the School-to-Work Opportunities Act of 1994 (STWOA), did not decrease or increase the liability of any school-to-work partner (Oklahoma Department of Vocational and Technical Education (1996, p.25). The liability that exists today also existed before the STWOA. A document produced by this state agency also stated, the school-to-work legislation does not create new causes of action, does not increase the amount of potential damages, and does not change the responsibilities of any school-to-work partner with respect to: common law; workers' compensation; child labor; the Fair Labor Standards Act; equity issues; and occupational safety and health. Hence, participation in work-based learning initiatives involves no liability beyond those already existing.

✎ What are the three major liability issues?

The insurance and liability issues can be divided into three general categories of student activity: at school; in transit; and on the job site. Schools are not without precedent in any of these categories. Secondary schools have been placing students in the workplace through education programs for a number of years. During these experiences, policies have been established to govern student transportation, insurance and various other features of workplace learning. As the work-based learning system expands the number and nature of workplace activities for student participants increases, a review and update of these policies should help alleviate many business and education concerns.

✎ What are the parent's rights and responsibilities?

Of special note to the issue of liability, concerning work-based learning experience, is the role of the parent. Parental involvement in a student's work-based learning experience is a critical component. As legal guardians, parents have a responsibility for the well-being of their children and right to know the risks and benefits of any learning experience. Business and education partnerships, which should include parent representation, need to: inform parents about the work-based learning experiences; make sure parents fully understand the parameters of the work-based learning experience; and obtain written parental consent prior to placement at a work-site.

On the other hand, parents need to fulfill their guardian responsibilities by: participating in their child's career exploration; supporting their child's career motivation; and collaborating with employers and school personnel in the development and execution of the work-based learning experience (Piper, 1996, p.4). Any reluctance on the part of the parent or guardian to sanction their

child's work-based learning experience should be considered as a request not to allow their child to participate.

Please be advised, business and education partners should consult with an attorney and their insurance carrier about the whole range of legal issues and their applications. This section only briefly discusses a variety of legal issues and could not anticipate all of the possible variables. The excerpts, compilations, and general applications of legal issues contained in this section are provided only as guidelines and are not meant to be complete reflections of liability issues.

Liability Insurance

✎ What does liability insurance cover?

Schools, businesses, agencies, and individuals carry liability insurance to protect themselves from civil law suits and pay damages resulting from their or their employees' (family members in the case of individuals) acts of negligence. The legal principles that apply to liability are generally true of every citizen (Fischer et al., 1995, p. 77). Schools, businesses, agencies, and individuals in the public or private sector are generally expected to provide a standard of care that includes **reasonable prudent behavior.** That standard of care is defined as, **not doing anything a reasonably prudent person would not do, and not failing to do anything a reasonably prudent person would do** (Baker & Carey, 2000). As a general rule everyone, regardless of their position, has an obligation to behave as a reasonably prudent person, at all times. A breach of the reasonably prudent behavior standard could be construed to be negligence (Piper, 1996, p.90).

✎ How is "reasonable prudent behavior" defined?

As noted, negligence may result from acts of omission as well as from acts of commission. Where students are involved, the degree of care expected of an individual will be measured in light of the danger involved and the age of the student (Baker & Carey, 2000). For example, a greater standard of care will be expected from individuals who supervise students who are exposed to dangerous equipment or work in high risk environments. Furthermore, a greater standard of care will also be expected from individuals who supervise younger children.

✎ Is the standard of care the same for all students in all occupations?

✎ Who is liable when students are on school activities?

At School: Clear authority is provided in the Ohio Sovereign Immunity Law, ORC 2744., for a school district to purchase insurance for its and its employees' potential liability (Baker & Carey, 2000). Essentially limited to personal injury or property damage, ORC 2744. does not provide total sovereign immunity, but personal injury and property damage are the areas most common to school-based learning. A school district may also elect to self-insure relative to its employees' potential liability. **Please note,** liability coverage is a major responsibility for school districts that must receive careful and special attention. School districts that fail to provide adequate insurance coverage to defend and indemnify employees face the requirement of paying for such defense and damages from the general fund.

✎ Who must defend and pay damages for the negligent acts of school employees?

The Sovereign Immunity Law, ORC 2744., (Baker & Carey, 2000) requires school districts to defend any employee in an action to recover damages for injury, death, or loss to persons or property caused by an act or omission of an employee if the act or omission occurred while the employee was acting in good faith and not manifestly outside the scope of his or her employment. The school

district is also required to indemnify and hold harmless an employee if a judgment (other than for punitive or exemplary damages) is awarded against the employee for damages caused by an act or omission of the employee if the employee was acting in good faith and within the scope of his or her employment.

School district employees, in the State of Ohio, are immune from liability unless one of the following applies:

- ~ the acts or omissions were manifestly outside the scope of their employment;
- ~ the acts or omissions were with malicious purpose, in bad faith, or in a wanton or reckless manner; or
- ~ liability is expressly enforced upon them by a section of the Revised Code.

Sovereign Immunity Law, ORC 2744., also provides that the following defenses and immunities may be asserted by school districts to establish non-liability:

- ~ the district is immune if the employee was performing a judicial, quasi-judicial, prosecutorial, legislative, or quasi-legislative function;
- ~ the district is immune if the employee's conduct, other than negligent conduct, was required by law, or authorized by law, or if the conduct was necessary or essential to the exercise of the district's powers;
- ~ the district is immune if the act that gave rise to a claim was within the discretion of the employee with respect to policy making, planning, or enforcement powers;
- ~ the district is immune if the loss resulted from the exercise of judgment or discretion in determining whether to acquire or how to use equipment, supplies, materials, personnel, facilities and other resources, unless the judgment or discretion was exercised with malicious purpose, in bad faith, or in a wanton or reckless manner. (Baker & Carey, 2000)

Business and education partners interested in further investigations of the Sovereign Immunity Law, ORC 2744., will find terms defined, limits on damage awards, the statute of limitations, and extended discussions of the elements contained in that section. School employees would be wise to review the school's liability insurance coverage in relation to this legislation, and function within the mandates of the law.

✎ Does liability insurance cover all medical expenses?

Please note, school liability insurance is not medical insurance. Liability insurance is designed to cover only acts of negligence on the part of schools or their employees. Instances where students sustain injuries to themselves or their property and no negligence is present must have personal medical insurance to cover those injuries. Medical insurance is available through the parent or guardian's family plan or in many cases schools make arrangements with insurance carriers to offer medical insurance coverage for school activities at reduced rates.

✎ Who is liable when the student-learner is at work?

At The Work-Site: The notion of liability becomes more complicated when the student participates in work-site learning experiences. If the student is being paid, he or she is considered an employee and hence is covered by workers' compensation. Injuries suffered in the course of employment are covered by workers' compensation without regard to whether the injury was the result of negligence on the part of the employer (Garfinkel, 1996, p. 3-6).

Furthermore, employers complying with workers' compensation laws shall not be held liable for injury, death, occupational disease, or bodily condition, received or contracted by any employee in the course of or arising out his or her employment (Dunn & Brann, 1998). However, employers may be held liable in cases of intentional tort or situations where the employer did not pay the workers' compensation premiums. In such cases, the employer and/or the school's liability insurance would need to provide coverage.

✎ What if the student is not being paid?

In situations where the student worker is not paid a wage by the employer, and neither a state statute nor any private agreement provide that the employer must cover the student for purposes of workers' compensation, then the student is not a covered employee. Examples of non-paid work-site learning experiences include, but are not limited to: field trips; job shadowing, volunteering, and trainees. Citing a California Education Code, Garfinkel (1995) stated, in such situations, schools must establish their own policies to deal with student injuries at work sites. The Department of Labor supported his position stating "if the student's participation in workplace activity can be

considered instructional and part of a non-employment relationship, then the school may be responsible for liability coverage". Generally, the same insurance and liability policies which apply to other off-site school experiences (i.e. athletes events, field trips) should apply." (p.3-7)

✎ Are employers free from liability in non-paid situations?

This does not mean employers are free from liability in non-paid situations. Employers still need to exhibit reasonably prudent behavior and provide a standard of care appropriate to the student's activity in the organization. Reasonably prudent behavior and standard of care are not additional burdens on the employer. The same obligations would need to be afforded any guest or visitor to the organization.

✎ Who pays for the workers' compensation insurance?

Workers' compensation: Ohio law requires employers with one or more employees to obtain workers' compensation coverage or be granted the privilege of self-insurance for liabilities associated with work-related accidents or occupational diseases (BWC, p. 6).

✎ How does the Workers' compensation law define "employee"

Within the Workers' Compensation laws (4123.01 ORC), employee means, every person in the service of the state, or of any county, municipal corporation, township, or school district therein, including regular members of lawfully constituted police and fire departments of municipal corporations and townships, whether paid or volunteer, . . . under any appointment or contract of hire, expressed or implied, oral or written . . . (Dunn & Brann, 1998). In the private sector, employee means every person in the service of any person, firm, or private corporation, including any public service corporation, that (i) employs one or more persons regularly in the same business or in or about the same establishment under contract for hire, expressed or implied, oral or written, including aliens and minors, household workers who earn one hundred sixty dollars or more in cash in any calendar quarter from a single employer, or (ii) is bound by any such contract of hire or by any other written contract, to pay into the state insurance fund . . . (Dunn & Brann, 1998). And, in construction employee means every person who performs labor or provides services pursuant to a construction contract . . . (see 4123.79 ORC and 4123.01 (A) (1) (c) for details) (Dunn & Brann, 1998)

✎ Can employers charge workers'

Employers pay the entire cost of workers' compensation. They may not deduct any portion of the workers' compensation premium from the wages of their employees. Also, employers may not exclude employees from benefits based on age, citizenship, gender, race, or relationship (BWC, p. 6).

✎ Do volunteers have workers' compensation coverage?

Business and education partners often inquire as to the status of volunteers who perform services of their own free will for a variety of organizations. According to the Bureau of Workers' Compensation (BWC, p.13), volunteers generally do not have workers' compensation coverage because they receive no wages. Therefore, the most appropriate determination of coverage can be established by whether individuals do or don't receive wages. However, effective January 1, 1999, public employers, such as political subdivisions, must cover their volunteer emergency service personnel, such as volunteer firefighters, police, and emergency medical technicians. Coverage is mandatory for these individuals, who are considered employees by nature of law according to the Ohio Revised Code (BWC, p.13),.

Coverage is in effect when volunteers answer mutual aid calls initiated under the mutual aid provisions of their organizations or bylaws. For volunteer police officers and firefighters, coverage is in effect from the time they respond to an emergency situation until they return to where they received the original call to duty (BWC, p.13).

✎ Can volunteers at public agencies be covered by workers' compensation?

Public employers may also cover volunteer workers who perform non-emergency duties and persons assigned volunteer work instead of a fine or jail sentence ordered by a judge. Coverage for these volunteers may be obtained by completing form U-69, *Contract for Coverage of Political Subdivisions (non-profit organizations, etc.)*. BWC requires a roster of all personnel with their addresses and Social Security numbers. Once the form is completed, it is returned to the Bureau of Workers' Compensation with a copy of a court order signed by the judge, if appropriate (BWC, p.13 & 14).

Bystanders, asked by an official in charge to assist at the scene of an emergency, are also covered by workers' compensation. Assisting bystanders receive the same benefits as volunteers for any injuries, occupational diseases or deaths arising out of their assistance at the emergency scene. For more information on volunteer coverage for public employers and reporting procedures, contact the BWC employer information unit (BWC, p.14).

✎ Who is liable in a non-covered employee situation?

The best and most prudent course of action for work-site coordinators would be to confirm an employer's workers' compensation coverage before placing a student at a work-site. In situations that are not covered, schools and their business partners must establish their own policies to deal with student injuries at work sites. As mentioned earlier, if the student's participation in workplace activity can be considered instructional and part of a non-employment relationship, then the school and business may be responsible for liability coverage.

✎ Who is liable when a student causes injury or damages?

Injury or Damages Caused by Students: Just as employers are liable for injury or damages caused by their employees, employers would also be liable for students in paid or unpaid positions. According to the Oklahoma Department of Vocational and Technical Education (1996, p.28), businesses that sponsor work-based learning activities may be liable for damages or injuries

caused by the participants involved in such program if the student is: acting on behalf of the participating business; or acting with the actual or apparent authorization of the business; and the student is negligent; and that act results in injury to or damages property of customers, passers by, visitors or the general public. On the other hand, if the student does something that causes injury to an employee in the workplace, that injury would typically be covered by workers' compensation.

✎ Who is liable for students traveling to and from the work site?

In Transit: Work experience students frequently leave school grounds during the school day to participate in a variety of work-site learning experiences. In general, liability for accidents and injuries during transit rests with the party responsible for transportation (Goldberger, et al., 1994, p.81). Whoever provides the transportation, school, parent, student, teacher, etc. accepts responsibility for accidents and injuries during that transit. Anyone transporting work experience participants should consult their insurance carrier to review their coverage and make sure they are in full compliance with the board of education's transportation policy.

Furthermore, transportation policies for insurance and liability developed by each local district to cover travel between school and work should be reviewed by the insurance carrier and the school's legal counsel. Examples of policies include: use of public transportation only; fleet insurance to cover transporting in an individual's vehicle; use of school vehicles only; and, regulations requiring the students to be responsible for their own transportation. Once established, all policies that apply to student transportation between the school and the work-site should be communicated to all stakeholders and included on written agreements.

✎ How private are student records?

Privacy of Information: Personally identifiable information about a student contained in school records is subject to extensive legislation and administrative regulations at both the state and federal levels. Under Ohio law, 3319.32.1 (A) ORC, no person shall release, or permit access to, the names or personally identifiable information concerning any student attending a public school to any person or group for use in a profit-making plan or activity. (B) no person shall release, or permit access to, personally identifiable information other than directory information (unless the school has been informed by the parents (or students over eighteen) not to release such information) concerning any student attending a public school, for purposes other than those identified in division (C), (E), (G), or (H) of this section, without the written consent of the parent, guardian, or custodian of each student who is less than eighteen years of age, or without the written consent of each such student who is eighteen years of age (Dunn & Brann, 1999). (3319.32.1 (C), (E), (G), and (H) explain school officials' access and handling of student records)

✎ Should parental consent be obtained before any student information is released?

On the other hand, Baker and Carey (2000) stated pupil records are also subject to the Ohio Privacy Act (1347. ORC). That act provides for the identification and notice of all personal information systems maintained by the state or local agency, including school districts. Any person who is the subject of this information must be permitted to inspect that information, contest its accuracy, relevancy, timeliness, completeness, and be advised of its use and users. These two Ohio laws must be addressed by business and education partners before they mistakenly violate the intent of the law and a student's privacy.

✎ Do the federal laws require parental consent be obtained before

The federal Family Education Rights and Privacy Act (FERPA), also known as the Buckley Amendment, requires personally identifiable information about a

student contained in school records must be kept confidential unless written parental consent is granted (Garfinkel, 1995, p. 3-7). A work experience coordinator who seeks to disclose information about a student to a potential employer for the purpose of seeking employment for the student will need to obtain the parent's written consent. Typically this is accomplished by having the coordinator obtain written waivers of confidentiality prior to seeking employment for students (Garfinkel, 1995, p.3-7).

Risk Management

✎ What is risk management?

Risk management is synonymous with good program management. The purpose of developing a written risk management plan is to: identify potential risks; develop plans to prevent accidental injuries or damage; and reduce the risk of legal accountability. Business and education partners involved in work-based learning programs need to jointly develop risk management plans. Most schools already have procedures and policies for field trips, cooperative education guidelines, and other program guidelines that could be adapted into a comprehensive plan to serve all parties.

Guidelines to developing a risk management plan include:

✎ How do business and education partners minimize their liability?

Consult with an attorney about the range of legal issues and their application to the planned work-based learning activities;

Involve insurance industry partners early in design of work-based learning experiences;

Review and revise board of education policies governing the placement of students in work-based learning activities;

Design, develop, administer, and operate work-based learning activities with due care to foresee dangers to students and comply with the federal and state employment laws. **Failing to comply with the Minor Labor Laws could result in large penalties.**

Prepare students appropriately for the work-site learning experience. Students should know what to expect and what is expected of them. Provide them with clear position descriptions and insist they operate within those bounds;

Communicate roles and responsibilities to all stakeholders. Every business and education partner should thoroughly understand their roles and responsibilities as well as the benefits of the work experience;

Maintain written training agreements and training plans, required by state and federal law, that provide for safety instruction, supervision and schedule of organized and progressive work for the student (Paris & Mason, 1995);

Screen and select only appropriate individuals to serve as work-site mentors and supervisors;

Provide orientation, appropriate training, and maintain a support system for work-site mentors and school staff members;

Confirm employer's workers' compensation coverage before placing a student at a work-site;

Require students who drive to the workplace to provide proof of auto liability insurance and verify they hold a valid driver's license;

Provide assurances that the work-site is in compliance with Occupational Safety and Health Administration (OSHA) regulations;

Provide adequate supervision. The standard of care provided should be directly related to the degree of risk associated with the student's work based activities. The more dangerous the occupational tasks, the greater the need for close student supervision (Piper, 1996, p.91). The degree of care required and need for close supervision increase as the age, maturity, and abilities of the students involved decrease;

Provide for proper instruction. Instruction provided at the work-site must be complete and appropriate for the occupation, including safety and health instruction as an integral part of all occupational instruction. Each work based assignment should be preceded by a demonstration of acceptable occupational practices in either the school or work-based learning environment (Piper, 1996, p.91). Student participants should know how, and be able to perform their assigned duties properly and safely.

Maintain equipment in a reasonable state of repair. Neither students nor other employees should be expected to work on poorly maintained equipment that would put their health and safety at risk. This does not mean all equipment must be new, but it should be in good repair (Piper, 1996, p.91).

Keep on file at the work-site an official age certificate, state or federal, that validates the date of birth for every employee under the age nineteen (DOL, 1996). This will comply with federal law and avoid unintentional violations of minimum age standards.

Provide regularly scheduled on-site visitations. School personnel have an obligation and a duty to observe students in the work-based learning environment;

Assess student work-site performance on a regular basis using the skills and knowledge cited on the training plan as the basis for evaluation;

Provide participants with the opportunity and procedure to report problems or suggest changes.

The purpose of these suggestions is to provide guidance to business and education partners when they engage in work-based learning activities. Unfortunately, these guidelines will not provide all the answers, nor do they carry the force of legal opinion. However, the profusion of laws, regulations, and liability issues present a compelling case for a risk management plan

regarding basic provisions for student safety and the liability of business and education partners.

Summary

The question of liability as it applies to work-based learning activities is not an easy one to address. There are no legal mandates that provide complete immunity for institutions, organizations, or individuals that participate in work-based learning initiatives. Schools, businesses, agencies, and individuals in the public or private sector are expected to provide a standard of care that includes not doing anything a reasonably prudent person would not do, and not failing to do anything a reasonably prudent person would do. This principle applies to every citizen, regardless of their activities.

Concluding with a passage that was presented earlier, business and education partners should consult with an attorney about the whole range of legal issues and their applications. This section only briefly discussed a variety of legal issues and could not anticipate all of the possible variables. The excerpts, compilations, and general applications of legal issues contained in this section are provided only as guidelines and are not meant to be complete reflections of liability issues.

RELATED EMPLOYMENT LAWS

✎ Are there other laws that affect work experience students?

As stated earlier, the School-to-Work Opportunities Act of 1994 (STWOA) is probably the most significant federal legislation impacting the legal issues and minor labor laws associated with work-based learning experiences. However, the STWOA does not provide waivers or additional compliance obligations for any state or federal laws. All school-to-work initiatives and other work-based activities may expect to meet the same employment regulations that existed before this act became law. For example, nothing in the STWOA shall be construed to modify or affect any federal or state law prohibiting discrimination on the basis of race, religion, color, ethnicity, national origin, gender, age, or disability, or to modify or affect any right of this chapter that may exist under other federal laws, except as expressly provided by this chapter (STWOA, 1994). This position is consistent across other federal and state laws as well.

✎ Does "all students" really mean "all?"

Every business and education partner and activity needs to function under the philosophy that "all means all have the opportunity." All students must be afforded equal access to work-based learning activities, and equal treatment and freedom from harassment within those activities. The civil rights laws are designed to protect minor employees from discriminatory practices as well as adult employees.

✎ What about sexual harassment and the work experience student?

In addition to prohibiting discrimination on the basis of race, religion, color, ethnicity, national origin, gender, age, or disability in hiring or firing policies, wages, fringe benefits, assigning or promoting, extending use of facilities, training, or other terms or privileges of employment, the Civil Rights Act of 1964 also prohibits sexual harassment (see also Ohio Revised Code 4112.). The U.S. Supreme Court, in Meritor Savings Bank v. Vinson (1986), approved the following guidelines and held that a claim of "hostile environment" sexual harassment is a form of sex discrimination (Fischer et al., 1995, p.347).

The Equal Employment Opportunity Commission, the agency that administers Title VII, issued guidelines that define sexual harassment as any unwelcome sexual advance, request for sexual favor, or verbal or physical conduct of a sexual nature, directed at males or females, when:

- ~ submission to such conduct is made either explicitly or implicitly a term or condition of an individual's employment;
- ~ submission to or rejection of such conduct by an individual is used as the basis for employment decisions affecting such individual; or
- ~ such conduct has the purpose or effect of unreasonably interfering with an individual's work performance or creating an intimidating, hostile, or offensive working environment.

✎ Are student-learners subject to OSHA standards?

Identical to the status of the civil rights legislation, nothing shall be construed to modify or affect the Occupational Safety and Health Act or the Public Employment Risk Reduction Act (4167. ORC). Administered by the Occupational Safety and Health Administration (OSHA) within the Department of Labor, the same regulations that existed before the increase in work-based learning experiences are still in force. As a federal agency, OSHA is primarily responsibility for setting and enforcing standards to promote safe and healthful

working conditions in the workplace or the use of specific practices, methods, or processes to promote safe work. The Public Employment Risk Reduction Act, on the other hand, requires public employers and employees to maintain a safe workplace in the public domain. Just as before work-based learning became so popular, employers are still responsible for becoming familiar with the standards that apply to their facilities, and ensure a safe working environment (Oklahoma, 1996, p.39).

Since recent legislation has not provided waivers or additional compliance for any state or federal employment laws, a review of all the possible employment laws in this document would be redundant for most employers and beyond the mission of this project. However, individuals desiring more information may want to review labor laws in addition to the FLSA, that are enforced and administered by the U.S. Department of Labor, Wage and Hour Division. Some of these include:

Davis-Bacon and Related Acts, which require payment of prevailing wage rates and fringe benefits on federally-financed or assisted construction;

Walsh-Healey Public Contracts Act, which requires payment of minimum wage rates and overtime pay on contracts to provide goods to the federal government;

Service Contract Act, which requires payment of prevailing wage rates and fringe benefits on contracts to provide services to the federal government;

Contract Work Hours and Safety Standards Act, which sets overtime standards for service and construction contracts;

Migrant and Seasonal Agricultural Workers Protection Act, which protects farm workers by imposing certain requirements on agriculture employers and associations and requires the registration of crew-leaders who must also provide the same worker protections;

Wage Garnishment Law, which limits the amount of an individual's income that may be garnished and prohibits firing and employee whose pay is garnished for payment of a single debt;

Employee Polygraph Protection Act, which prohibits most private employers from using any type of lie detector test either for pre-employment screening of job applicants or for testing current employees during the course of employment;

Family and Medical Leave Act, which entitles employees of covered employers to take up to 12 weeks of unpaid job-protected leave each year, with maintenance of group health insurance, for the birth and care of a child, for the placement of a child for adoption or foster care, for the care of a child, spouse, or parent with a serious health condition, or for the employee's serious health condition (DOL 1282, 1998).

Individuals desiring more information regarding employment laws applicable to all employees may refer to the State and Federal Technical Assistance Contacts provided in the next sections.

In closing, employers that adhere religiously to the numerous laws impacting employment practices have nothing to fear from work-based learning activities. Their mode of operation should be "business as usual".

STATE TECHNICAL ASSISTANCE CONTACTS

Ohio Department of Commerce
Division of Labor & Worker Safety
Bureau of Wage and Hour

Robert Kennedy	Chief	614-644-2393	Fax 614-728-8639
	Asst. Chief	614-644-2393	Fax 614-728-8639
Hallie Brotherton	Supervisor	614-728-8683	Fax 614-728-8639
Michele Hanly	Supervisor	614-644-2441	Fax 614-728-8639

Business and Education partners with specific questions, or desiring additional information regarding Ohio's minor labor laws may contact their regions representatives.

Stephanie Barnthouse
Investigator
Hamilton, Oh 45012-0326
513-737-2058

Jackie Clark
Investigator
Columbus, Ohio 43216
614-752-9498

Beverly Gossett
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25 South Front Street
Columbus, OH 43215 - 4183

Agriculture Education
614-466-3076
Fax: 614-466-7097

Business & Marketing Education
614-466-3891
Fax: 614-466-5921

Career Based Intervention Programs
614-466-3900
Fax: 614-728-6176

Family & Consumer Science Education
614-466-3046
Fax: 614-644-5812

Industrial & Engineering Systems
Education/Health
614-466-2901
Fax: 614-644-5702

Office for Exceptional Children
614-466-2650
Fax 614-728-1097

Ohio Civil Rights Commission

1111 East Broad Street, Suite 301
Columbus, OH 43205
614-466-2785

Bureau of Workers' Compensation

William Green Building

30 West Spring Street
Columbus, OH 43215-2256

James Conrad, Administrator

Public Information
1-800-644-6292

Ohio Department of Job and Family Services

State Office Tower
30 East Broad Street, 32nd floor
Columbus, OH 43266

FEDERAL TECHNICAL ASSISTANCE CONTACTS

Wage-Hour Division

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Office of Federal Contract Compliance Program

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William M. Murphy
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513-841-4132
FAX: 513-841-4114

Arnis Anderson
420 Madison Ave., Suite 600
Toledo, OH 43604
419-259-7542

U. S. Department of Education

ADA, Office of Civil Rights
Room 5000
330 C Street SW
Washington D. C. 20202
202-205-5413
1-800-358-8247 TDD

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